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THE NEW

**Natura Brevium**

WITH

Sir *MATTHEW HALE's*

COMMENTARY.

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# Natura Brevium

OF THE

Most Reverend JUDGE,

Mr. *Anthony Fitz-Herbert.*

TOGETHER WITH

The Authorities in LAW, and CASES in the BOOKS  
of REPORTS cited in the MARGIN.

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The Seventh Edition corrected.

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To which is added (never before printed),

A

COMMENTARY,

CONTAINING

Curious NOTES and Observations on the most remarkable and useful WRITS, which Illustrate and Explain many doubtful and abstruse Cases, and Points in the Original.

By the late Lord Chief Justice *HALE.*

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*With a New and Exact Table of the most Material Things contained therein.*

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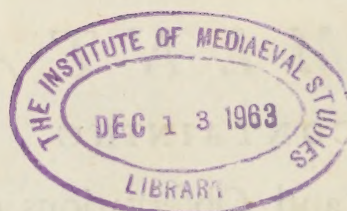
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THE NEW  
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Most Reverend JUDGE  
Mr. Anthony Fitz-Herbert  
TOGETHER WITH

The Authorities in LAW, and CASES in the BOOKS  
of REPORTS cited in the MARGINS.

The Second Edition corrected.

To which is added (never before printed)



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T H E  
EDITOR *of this* EDITION  
T O T H E  
R E A D E R.

**I**T may be proper to inform the Reader, that the Annotations, and Notes added to this Edition, are chiefly of two Kinds, and collected by two several Hands; *viz.* The one consisting only of References to the Year-Books, and other printed Reports, are set in the Margin, and were collected by Sir *Wadham Windham*, who was constituted one of the Judges of the King's Bench *Anno* 1660. The other being very curious Notes and Observations on the most remarkable and useful Writs and Divisions of the Book, were collected and digested into Method, by that great and good Judge Sir *Matthew Hale*, (who the 7th of *November*, 1660, was made Lord Chief Baron of the Exchequer, and the 18th of *May*, 1671, was constituted Lord Chief Justice of the King's Bench) and as these illustrate and explain many doubtful and abstruse Cases and Points in the Original; so the whole may well be denominated, Sir *Matt. Hale's Commentary on Fitzherbert's Natura Brevium.*

*The Editor of this Edition to the Reader.*

As to the Subject Matter of these Annotations or Commentaries, the Reader may observe Sir *Matthew's* chief Regard therein was to illustrate and explain such Writs as relate to the following Particulars.

- I. To the Church and Church-Men.
- II. To the Regal State and Government.
- III. To real Rights or Estates in Lands or Offices.
- IV. To personal Rights in Goods and Chattels.
- V. To the Method of Processes and Proceedings.

And therefore we find his Annotations larger and fuller on such Writs, as do respectively relate to any of these Heads.

What remains to be observed as to the present Edition, is, that it has been carefully examined with the Original, that the References, and Cases cited have been corrected by the Books referr'd to; and that the Observations and Annotations have been duly placed and distributed under their respective Paragraphs, with proper Marks referring to the Subject Matter, Word or Sentence to which they do respectively relate.

This Book may well be said to contain a complete Body of the Common Law, and that not only in it's Theory and Judicial Part; but also in it's Praxis and Method of Proceedings, from the Forming of the Writ or Action, to the Judgment and Execution had thereupon.



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THE  
PREFACE

Composed by the Reverend Judge.

Mr. *Anthony Fitz-Herbert.*

**I**N every *ART* and *SCIENCE* there are certain Rules and Foundations to which a Man ought to give Credit, and which he cannot deny.

In like Manner there are divers Maxims and Fundamentals in the Knowledge of the Common Laws of the Land, which a Man ought for to believe very necessary for those who will understand the same Law, especially at the Beginning of their Studies; for upon those Fundamentals the whole Law doth depend. For which Purpose, in Time past there was composed a very profitable Book, called The Register, which doth contain sundry Principles, by which he must be well instructed who would study the Law. And also for that Purpose was there composed by a Learned Man, a Book called *Natura Brevium*, which Book doth declare and

## The P R E F A C E.

*set forth the Diversities and Natures of many Original Writs, with their Proceſs; which Book helped much to the Underſtanding not only of the Register, but alſo of the Law of the Land. But becauſe of late Time that Book hath been tranſlated into the Engliſh Tongue, and many Things are therein which are not according to the Law of the Land, and many other Things are omitted which are very profitable and neceſſary for the Underſtanding of the Law; for that Cauſe is this Work compoſed and publiſhed, wherein if there be any Thing againſt the Opinion of the Sages who have the Adminiſtration of the Laws, the Requeſt of him who hath taken the Pains to make the Treatiſe is, that they would correct and amend the ſame, as they ſhall ſee good, according to the Law.*

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T H E



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T H E

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# FITZ-HERBERT

HIS

## Natura Brevium.

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### *Writ of Right Patent.*

**A** **T**HE Natures of the original Writs are to be shewed and declared, according to the Manner and Form as they are in Order written and set down in the Register, which shall be expressed and specified in Manner following:

And first, because the (a) *Writ of Right Patent* is in its Nature the highest Writ in Law, the Nature of that Writ shall be first declared, and where it lieth.

**B** This Writ ought to be brought of Lands or Tenements, and not of an Advowson, or of Common; and lieth only of an Estate of Fee-simple, and not for him who hath a lesser Estate, as Tenant in Tail, Tenant in Frank-marriage, or Tenant for Life: For these Tenants shall not have a *Writ of Right Patent*. 40 E. 3. 8.  
Post. 5. C.

B

And

(a) *The Proceedings on a Writ of Right.*

1. *The Count or Declaration.*] See Coke's *Entries* 182. The Count in a *Writ of Right* of his own Seisin; and 23 E. 3. 8. a Count that it was his Right and his Heritage, which is thus entred: J. S. petit ver' J. N. *Maner' de D. ut Jus & Hereditat' sua' per breve de Dom' Regis, &c. unde dicit quod ipsemet fuit se' situs ut de feodo & jure tempore pacis tempore, &c. capiend', &c. Et quod tale sit Jus suum, offert, &c.*

2. *The Defence and Mise, or Issue joined.*] The Defence is thus: *Et predict' A. venit & defendit Jus predicti J. S. Querentis & se'fina' ejus quando, &c. & totu', &c. & quicquid, &c. & maxime de Manerio predicto cum pertinentiis ut de feodo & jure, & vocat inde ad warr'. Or thus: Et ponit se inde in Magna' assisam Dom' Regis & petit Recogn' fieri utrum ipse majus Jus habet tenend' Maner' prad' cum pertinen' sibi & hered' suis ut Tenens inde per Warrant' (if he be Vouchce) sicut ill' tenet an'.*



21 Aff. 17.

per Curiam,  
a Man reco-  
vered against  
the Heir by  
Default, and  
he brought a  
Mortdaun-  
cester.

And this Writ lieth properly where a Man is seised in Fee-simple, C and another recovereth the Land against him by Default in a *Præcipe quodd reddat*: Now he, who hath lost by Default, ought to sue this Writ. Or if a Man seised in Fee-simple die seised of such an Estate, and a D Stranger doth abate, and entereth into the Land, and deforceth the Heir; the Heir may sue this Writ against the Tenant of the Freehold of the same Land, or an Assize of *Mortdauncester*. *Post*. 196.

(a) And

*an' prad' Quer' habend' Maner', &c. ut ille superius petit.* Or thus: *Et dicit quod ipse majus jus habet tenend', &c. Et hoc paratus est probare per Corpus lib' hominis cui J. R. nomen presentis hic in Cur' qualitercunq; Curia Regis hic cons'. Et si male contigerit de ipso J. R. paratus est illud probare per aliud. Et petit Re.ogn' fieri utru', &c.*

And Note; The Order of joining Battle, is according to the Form of joining the Mife, viz. That he has the most or best Right. 3 H. 6. 55. Nu. 7. And sometimes by his Defence he says, *Et parat' est defendere jus suum per Corpus suum.* 30 E. 3. 20.

Note, Tender of the Demy or Half Mark, is when the Mife or Issue on the Grand Assize is joined before. 22 E. 3. 8. See *Litt. Sect.* 514.

Note also; The Form of the Writ of Right, is recited after the Count of the Demandant, for the Tenant to make his Defence *de novo*, and thereupon to vouch or plead in Bar; and so if the Demandant replies to the Bar, the Tenant shall make a Defence *de novo*, and plead to the Title. 21 H. 6. 26. per *Newton*.

3. *The Trial of the Grand Assize.*] Note, Herle granted an Inquest instead of the Grand Assize, for that the Tenements in Question were of small Value; and a Writ issued to the Sheriff to elect four Men, who were to elect an Inquest in Nature of the Grand Assize. 7 Ed. 3. 65. But it seems this was done by Consent; for otherwise it cannot be so done, although the Demandant prays it. 22 E. 3. 8.

The Electors ought to elect sixteen Knights *gladio cinctos*, from amongst themselves and others; and if there are not so many Knights in that County, then by the Assent of Parties, they may elect as many valiant Serjeants, (*i. e.* Esquires) by whom they shall elect three (four) Knights from amongst themselves, and the Remainder of the Serjeants, and Process shall issue against all of them by *Venire Facias*. 26 E. 3. 57.

Yet if at the first Day any of the four Knights makes Default, a *Habeas Corpus* shall issue, and not a Summons. *Dyer* 79.

Note; The Writ to the said Electors is, *Quod Eligant de seipsis & aliis* 12, &c. yet not less than sixteen shall pass in a Grand Assize, *Dyer* 98. and if there are not so many Knights in the same County, they shall elect them of the next County. See 33 Ed. 1. *Fitz. Trial* 97.

See the whole Form of joining Battle in 29 E. 3. 12. but in a better Form, 30 E. 3. 20. And see there an Imparlance for the Demandant, after Battle tendred by the Tenant; and the different Forms of joining Battle between the Parties and the Champions. See 1 H. 6. 7. 13 El. *Dyer* 301.

4. *The Process in a Writ of Right.*] In a Writ of Right, the Tenant is not demandable till the fourth Day after the Return, except it be after the Mife or Issue joined; for in that Case he is demandable, and ought to appear on the first Day. 24 E. 3. 28. 29 E. 3. 18. per *Thorpe*. See also 1 E. 3. 1. where after the Mife joined, the Parol was put without Day by the King's Demise; and at the Resummons, the Tenant was demanded the first Day, and for that he made Default; his Default was recorded, and on the fourth Day the Demandant pray'd Seisin, and had the Grand Cape.

The Demandant, after the Mife joined by Battle or Grand Assize, ought to offer himself in Person, or by Attorney, with his Champion, &c. and recite the Words of the Mife, the first Day after the Mife joined, and pray that the Tenant be demanded; otherwise a Nonsuit shall be awarded at the fourth Day. 42 E. 3. 15. But if after the Mife joined a Petit Cape be awarded returnable *quinden' Mich'*, &c. it is sufficient for the Demandant to offer himself the fourth Day. *Dyer* 103.

An *Essoin de malo lecti* lies only in a Writ of Right; and Note, in this Writ the Tenant cannot join the Mife by Attorney; and therefore, though the Tenant has an Attorney, yet he may be essoined. 19 H. 6. 61.

Note; The Process for the Grand Assize is a *Venire facias*, and not a *Habeas Corpus*; and yet if they do not appear thereon, they shall be taken. *Dyer* 270.



**E** (a) And this Writ ought to be brought against him who hath a Freehold at least in the Land, and not against Tenants for Years, Tenants by Statute-merchant, Tenants by *Elegit*, nor Tenants by Statute-staple; but ought to be brought against those Tenants who have an Estate in Fee-simple in the Lands, or an Estate-tail, or for Term of Life at the least.

**F** And this Writ is always Patent, and not Close, as other Writs are. And if the Lands be holden of other Persons than of the King or of the Queen, then this Writ shall be directed unto the Lord himself, of whom the Lands or Tenements are so holden, if the Lord be not out of the Realm; for then it shall be directed unto the Lord's Bailiff; and then the Chancellor of *England* ought to be certified thereof. And if a Man be elected Bishop, and a *Writ of Right Patent* is to be used in the Court of the Manor of the said Bishop, the Writ shall be directed unto the Baliffs of the Elect, and not unto the elect Bishop himself. *Vide post.* And this Writ is as a Commission unto the Lord, or unto the Bailiff of *2. E.* the Manor, that they shall do Right. And the Form of the Writ directed unto the Lord himself is such:

**G** *Henricus Dei gratiâ, &c. Henrico Comiti Lanc. salutem Præcipim' tibi, quòd sine dilatione plenum rectum teneas A. de B. de uno mesuag' & xx. acris terr' (b) cum pertin' in I. quæ clamat tenere de te per liberum Servitium unius denarii per ann', pro omni Servitio, quod W. de T. ei desorceat; & nisi feceris, Vic' Nottingham faciat, nè ampliùs inde clamorem audiamus pro defectu recti: Teste, &c.* *Vide 2. E.*

**H** And if the Lord be out of the Realm, then the Form of the Writ which shall be directed unto his Bailiffs shall be such:

*Rex (c) Ballivis H. Comitis Derb' Honor' de P. in Com' Derb' salutem. Præcipimus vobis, quòd sine dilatione plenum rect' teneatis A. de B. de uno mesuag' & xx. acris terræ cum pertin' in I. quæ clamat tenere de dicto Dom' vestro per liberum Servit', faciend' sectam ad Curiam præd' Domini vestri Honor' præd', in Comitatu præd', de tribus septimanis in tres septimanas, pro omni Servitio, &c. ut supra.*

**I** And by that it appeareth, that in a Writ of Right Patent he must express by what Services the Lands are holden, &c. And if the Lands are holden of the King or of the Queen as of an Honour, or in Burgage, then the Writ shall be directed unto the King's or Queen's Bailiffs, and the Writ shall be such:

B 2

Henricus

5. *The Judgment on a Writ of Right.* Judgment final is given against the Demandant, and afterwards the Grand Assize is awarded, the Tenant tenders the Demy Mark for the Time, and no Seisin is found. 22 E. 3. 8. 34 E. 3. *Judgment* 256. But if the Seisin be found, they shall enquire further of the Right. 3 E. 3. F. *Droit* 26. See *Litt. Sect.* 514.

Judgment final was given against the Tenants, Baron and Feme, on a Default after the Mife joined, viz. That the Tenant (Demandant) should hold to him and his

Heirs, quit of the Baron and Feme, and of the Heirs of the Feme. 22 E. 3. 17.

(a) This Paragraph seems to be an Addition to *Fitzherbert*, and is contrary to B. and C. *supra*, and *Post.* 5 C.

(b) Note; In some Cases where Land is demanded, the Writ shall be *cum pertinentiis*. See 19 Ed. 2. *Fitz. Bre.* 844. and so of an Advowson, 5 Ed. 3. *Fitz. Bre.* 748.

(c) Because, although the Suitors are Judges, yet the Bailiffs shall make the Process. *Mich.* 7 H. 8. *Rot.* 103. 2 *Benl. fol.* 5.

## Writ of Right Patent.

*Henricus Dei gratiâ Rex, &c. Ballivis suis Lincoln' salutem. Præcipimus vobis, quòd sine dilatione plenum rectum teneatis A. de B. de uno mesuagio cum pertin' in Lincoln', quòd clamat tenere de nobis per liberum Servitium unius denarii per annum pro omni Servitio, quòd W. de B. ei deforc' ne amplius inde clamorem audiamus pro defectu recti, &c.*

And if a Man sue a Writ of Right Patent of Lands or Tenements K which are holden by a Knight's Fee, then the Form of the Writ shall be: *De uno mesuag' & x. acr' terræ, &c. quæ clamat tenere de te per Servic' feod' unius Militis pro omni Servitio.*

And the Writ of Right lieth of a Passage over the Water of Thames, L and of Pasture for 100 Sheep, and of the Rent of 1 l. of Ginger; thus: *De uno mes. decem acris terræ, novem solidat' redd', & passagio ultra aquam Tamisæ, & pastura ad cent' oves, cum pertin' in W. & de redditu unius libræ zinziberis, unius libræ canell', unius rosæ, unius paris calcarium deauratorum, & de tertia parte unius gardini, cum pertinen' in N. quæ clamat tenere de nobis per liberum Servitium inveniend' nobis una cum participibus suis quinque naves ad transitum nostrum ad mandatum nostrum pro omni Servitio, &c.*

[2.] And if the Lands of any Lord be in the King for the Nonage of the A Heir, and a Writ of Right is to be brought in the Court of the Manor, where the King hath committed the Wardship of the Lands to another; the Writ of Right shall be directed unto the Bailiffs of the Guardian to whom it is committed, or unto the Guardian himself, if he hath the Land in Ward in his own Right, and by Reason of the Seigniorie that the Heir is in his Ward. And the Forms of the Writs in the Register are thus: *Rex Ball' custod' terræ & hæred' A. de B. Or thus: Ballivis custod' terræ A. de B. And this Writ is where the Guardian hath only the Wardship of the Land, and not of the Heir, &c. And unto the Guardian himself the Writ is, Rex custod' terræ & hæred' B. salutem Præcipim' tibi, &c. quòd clamat tenere de prædict' hæ', &c. And if the Heir hath no Court for the Poorness of the Land, that it is of so small Value, then the Writ shall be directed unto the chief Lord, as chief Lord, and not as a Guardian; and then the Writ shall say, *Et quæ de ipso clamat tenere, &c.* and shall not say as Guardian.*

And it appeareth that a Man shall have a Writ of Right of a Knight's Fee; and the Writ shall be such:

*Rex A. de B. salut', &c. Præcipimus tibi quòd, &c. W. &c. de Servitio B unius feod' Militis cum pertin' in W. quòd clamat tenere, &c. per Servitium unius paris calcarium deaurator', pro omni Servitio, &c. or, per Servitium inveniend' hominem equitem vel peditem ad eundem tecum in exercitu Walliæ, ad sumptum tuum & ad costum, &c. pro omni Servitio. Or thus: Per liberum Servitium, portand' Brevia tua ad sumptum tuum & ad costum tuum infra Com', pro omni Servitio.*

And there is an Order set in the Register, when a Man demandeth C divers Parcels of Land in his Writ which are of divers Natures, which Parcel shall be first specified in the Writ, and what Parcel shall be next unto that, and then what Parcel shall be next to that, and so of all the Parcels; and that appeareth by the two Verses following:



*judgium, um, lendinum, lumbare, dinum, ra, tum, tura, cus, ra,  
Mes tost mo co gar ter pra pas bos brue mora,  
ria, cus, tum, caria, ditus  
Junca maris alne \* pis red sectare priora.*

8 Aff. 1. 17.  
16 Aff. 46.  
\* See F. N. B.  
123 H.

And if a Man in his Writ will demand 20 Houses, and 10 Acres of Land, and 10 Acres of Meadow, and 10 Acres of Pasture, and divers other Parcels; and afterwards in the same Writ he will demand the Moiety, or the third Part of one House, or of one Acre of Land, or of Meadow, or of Pasture; then the Form of the Writ is, to put in the Beginning of the Writ the whole Parcel, and in the End of the Writ the Moiety, or the third Part, &c. thus: *Quod plenum rectum, &c. de uno mesuagio, uno molendino, uno gardino, medietate unius mesuag', unius acrae terrae, cum pertinen', excepta 1. acrae terrae in N. &c.* so as the Exception shall always be in the End of the Demand.

8 Aff. 24. in  
which Assize  
(Bosens) was  
put before  
Pasture, yet  
good, v. 7 E.  
6. Dyer 84.  
3 Mar. 169.

D And a Writ of Right may be brought against divers Tenants who hold their Lands severally; and then the Form of the Writ is, *Rex A. B. &c. Praecipimus tibi, quod, &c. plenum rectum teneas A. de xx. acris terrae cum pertinent' in N. quas clamat, &c. unde F. x. acr', & S. tres acras, & C. vii. acras ter' ei deforc'.* And so the Word [Land] shall be in the End to him that shall be supposed last Deforcer, &c.

E And if a Writ of Right be brought in the Court of any Bishop, or Abbot, it shall be then directed to the same Bishop thus: *Rex, &c. venerabili in Christo Patri Gulielmo eadem gratia Archiepiscopo Cantuariensi, totius Angliae Primati, salut'.* Mandamus vobis, quod sine dilatione, &c. quod clamat tenere de vobis per liberum Servitium, &c.

1 G. 3. A.

And if it be directed unto an Abbot, then the Writ shall say, *Quod clamat tenere de te, &c.*

And if in the Time of the Vacation of any Bishoprick, a Writ of Right shall be brought in the Court of any Lands which are of the Bishoprick, which are in the King's Hands by Reason of the Vacation of the Bishoprick, then the Writ of Right shall be directed unto the King's Bailiff, or unto the Bailiff of him who is the Bishop elect; and the Form of the Writ is such: *Rex Ballivis Archiepiscopat' Ebor' de C. salut'.* Or thus: *Rex Ballivis H. (a) Elect' Lincoln', &c. salut'.* Praecipimus, vobis, &c. quod clamat tenere de praedict' Archiepiscop'. Or thus, Ante 1. F. if it be directed unto the Bailiffs of the Bishop elect: *Quod clamat tenere de praed' Domino vestro per Servic', &c.*

F But the Lord may give Licence unto his Tenant to sue his Writ of Licence. Right in the King's Court, or the Common Pleas, before the Justices; and that as well after the Writ purchased and returned into the Common Pleas, as before the Writ purchased and sued. And the Form of the Writ when it shall be sued in the Common Pleas, by Licence of the Lord, shall be such: *Rex Vic', &c. Praeceptum A. quod juste, &c. redd' C. unum mesuag' cum pertin' in M. quod clamat esse jus & haereditatem suam, & unde querit' quod praed' A. ei injuste deforceat; & nisi fecerit, & praedict' C. fecerit*

(a) For he ought not to be named Bishop till Consecration, not even though he came in by Collation of the Pope, but he shall be named only Elect. 5 Ed. 2. Fitz. Brev. 800.



Vide 4. D.

*fecerit te securum de clamore suo prosequend' tunc summ. per bonos Sum' præd' A. quod sit coram justic' nostris apud Westm' in quindena Sanctæ Trinitat', ostens' quare non fecerit: Et habeas ibi Sum', & hoc Breve. T. &c. quia I. capital' Dominus Feod' illius nobis inde remisit Cur' suam.* And so this Clause shall be put in the Writ after the *Teste*, &c. And if this Clause be omitted, and the Lord after the Purchase of the Writ send his Letter to the King that he is contented therewith, it is sufficient.

[3.]

And if such Clause, *quia Dominus remisit Cur' suam*, were in the Writ, it is not material whether there were any Letter of the Lord in the Chancery, proving his Assent, or not. And the Form of the Letter of Licence, which shall be certified unto the King, is thus:

*Excellentissimo Principi Domino H. Dei gratiâ Regi Angl', Domino Hi- A bern', & Duci Aquitaniæ, Dunelm' Episcopus salutem in eo per quem Reges regnant, & Principes dominantur. Quia K. de S. in Curia vestra, coram Justiciar' vestris de Banco, per Breve vestrum de Recto, W. de uno mesuagio cum pertin' in I. quod de nobis tenetur, nostrâ licentiâ mediante proponit implacit' vestræ Celsitudini Regiæ tenor' præsentis intimamus nos nostram Cur' vobis inde hâc vice remisisse, salvo nobis alias jure domini nostri in casu consimili, si acciderit. In cujus rei testimon' has literas nostras fieri fecimus Patentes. Dat' apud London', die, anno, &c.*

But if the (a) Tenant of any Lord sue such a Writ of Right in the B King's Court without such Letter, and recover, it seemeth the Recovery is good, and the Lord shall not void the same nor the Tenant, Also it seemeth to stand with Reason, that if a Man hold of any C Lord, as of a Seigniorie in gross, which is not any Manor, for which Seigniorie he cannot keep any Court; that then the Tenant ought to sue such Writ as before in the King's Court, and that the Lord shall not have Action, or other Means to annul this Act, because he hath not any Court to hold Plea for that there. And in the End of the Writ may be these Words: *Quia Dominus remisit Curiam, &c.* But if the Tenant will sue forth the Writ of *Præcipe in Capite* in the King's Court for such D Lands as are holden of another Lord, (b) then the Lord shall have a Writ out of the Chancery directed unto the Justices of the Common Pleas, commanding them, that if it doth not appear unto them that the Lands are holden of the King, but of another, they shall proceed no farther on that Plea. For by this Writ the Plea supposeth the Lands to be holden of the King, and therefore He and his Heirs shall be concluded against the King for the Tenure, and the same shall be prejudicial unto the Lord of whom the Lands are holden: But by the other Writ he doth not suppose any Tenure in the Writ, and therefore there is great Diversity. *Tamen quære.*

*Præcipe in Capite.*  
Post. 5. A.

And if a Man sue a Writ of Right directed unto the Lord of whom E the Lands are holden, and he will not hold his Court to proceed upon the Writ; then the Demandant in the Writ of Right shall have a Writ directed

(a) Yet see 6 E. 3. 22. He may come in and pray that it be inquired by the Enquest, &c.

(b) See 6 E. 3. 16. *Mag. Char. c. 24.* But

the Tenant in a Writ of Right shall not alledge this by Way of Challenge, but only by Way of Protestation, to save an Estopple of the Tenure. 38 Ed. 3. 31.

directed unto the Lord, commanding him to hold his Court, &c. and if he will not receive the Writ, nor do Right unto him, he may sue forth a Writ commanding him to do Right, and thereupon he may have an *Alias*, and a *Pluries*, and *Attachment*; and the Form of the Writ of *Attachment* is such:

Rex Vic', &c. Si A. fecerit, &c. tunc pone, &c. B. quod sit, &c. ad re- *Attachment.*  
spond' tam nobis quam præfato A. quare cum eidem B. per Breve nostrum de Recto præcipimus, quod sine dilatione plenum rectum teneret præf' A. de uno mesuag' cum pertin' in N. quod T. ei deforceat; idem B. Mandat' nostrum in hac parte parvi pendens, Breve nostrum prædict' in favorem prædict' T. malitiose suppressit. Or thus: Prædict' Breve nostrum recipere, & Curiam suam tenere, & eidem A. in præmiss' justiciam facere recusavit, in nostri & Mandati nostri prædict' contempt', & ipsius A. grave damnum, ac exhæredationis periculum manifestum: Et habeas, &c. And upon that if the Defendant appear he shall be put to Answer, &c.

F But if the Lord of the Court hold his Court, but the Lord, or the Bailiff, or Officer will not do him Right, or delay him to have Right, or to make Process, &c. then the Demandant may shew unto the Sheriff of the County how he is delayed, &c. and pray the Sheriff to award such a Precept or Writ, which is called a *Tolt*, directed to his Bailiffs, by his Precept, to remove the Plea before him into his County; and upon that the Sheriff ought to award such a Precept to his Bailiff, &c. and to go unto the Lord's Court, and there remove the Matter before the Sheriff in his County. And the Form of the Precept is such: *Tolt on the Lord's Default, at the Plaintiff's Suit.*

Post. 7. E.

Robertus A. Vicecomes Norf. Edmundo C. Ball' Domini Regis Ducat' sui Lancastr' de F. salutem. Quia ex querela Joh. B. ad Com' meum, scilicet, die Lunæ proxim', &c. anno regni, &c. apud Norwic' en le Shire-houfe tentum, personaliter accedentis accepi, quod, licet ipse Breve Domini Regis de Recto patens, Ball' dicti Domini Regis Ducat' sui Lancastr' de F. in dicto Com' meo, direct', de eo, Quod ipsi plenum rectum tenerent dicto Joh. B. de maner' de F. cum pertin', quod Joh. S. ei deforceat, detulisset J. P. & J. B. Ball' dicti domini Regis Ducat' prædict', de F. prædict' tamen pro eo quod dicti Ballivi favent dicto J. S. in ea parte, & plenum rectum secundum exigentiam ejusdem Brevis hucusque distuler' facer'; tibi ex parte Domini Regis præcipio, firmiter injungens, quod in propria persona tua accedas ad Curiam Domini Regis Ducat' sui prædict' de F. & Loquelam quæ est ibidem int' præf. Joh. B. & Joh. S. per dictum Breve in Com' meo proxim' tenend' tollas, & summonneas per bonos Sum' prædict' Johannem S. quod sit ad Com' meum Norf. die Lunæ proxim' futur' apud N. en le Shire-houfe tenend', præfato Johanni B. inde responsurus: Et habeas ibi Loquelam prædict', Sum' & hoc Præcept'. Dat' in Com' meo apud N. en le Shire-houfe, die Lunæ proximo, &c. anno supradicto.

G And by this it appeareth, that the Demandant may remove the Matter out of the Lord's Court into the County-Court: And it seems reasonable that the Tenant may also remove the Matter by a *Tolt* made by the Sheriff, supposing that the Bailiffs of the Court do favour the Demandant in the Matter: *Tamen Quære*; for the Rule in the Register is, that the Tenant may remove the Plea out of the Lord's Court for good Cause [4.] *Tolt at the Tenant's Suit.*



Cause before the Justices in the Common Pleas; but the Demandant cannot so do, because he may have a *Tolt* from the Sheriff, to remove it out of the Lord's Court into the County-Court.

*Recordare.*

But when it is in the County, he may remove it thence by a *Recordare* **A** before the Justices in the Common Pleas. And by this Rule it seems, that the Tenant cannot remove the Plea by a *Tolt* out of the Lord's Court into the County, but he ought to remove it into the Common Pleas by a *Recordare*, &c. and that for good Cause shewed in the Writ. And the Writ of *Recordare* is such: *Rex Vic', &c. salut'. Præcipimus tibi quod assumptis tecum quatuor discret' & legal' Militibus de Comitatu tuo, in propria persona tua accedas ad Cur' A. de B. & in plena Cur' illa recordari fac' Loquelam quæ est in eadem Curia per Breve nostrum de Recto, inter W. Petentem & S. Tenentem, de uno mesuag' cum pertin' in B. & Record' illud habeas coram Justiciariis nostris apud Westm' in xv. sancti Mich' sub sigillo tuo & sigill' quatuor legalium hominum ejusdem Cur' qui Record' ill' interfuerunt, & partibus eundem diem præfigas, quod tunc sint ibi, in Loquela illa prout justum fuerit processur', & habeas ibi nomina prædict' quatuor hominum, & hoc Breve: Teste, &c.* And in the End of the Writ of *Recordare*, the Cause of the Removal shall be put in thus: *Quia mesuag' præd' T. Ballivo Cur' prædict', qui tenet Placita ejusdem Cur' tanquam consanguineo & proximo Hæredi prædict' W. descendere deberet post mortem ejusdem T. si idem W. sine hæred' de se obiisset, & idem W. illud versus præfat' T. in Cur' prædict' distraxisset, propter quod idem Ballivus favet ipsi W. in Loquela prædicta, ut dicitur; fiat Executio istius Brevis, si causa sit vera, & prædict' S. hoc petat, & aliter non.*

V. 3 H. 4. 14.  
12 H. 4. 13.  
& 17. 1 H. 7.  
30. 1 & 2 P.  
& Ma.  
Dyer III.  
Pone.  
35 Ed. 3.  
Droit 30.  
Post. 7. E.

And there are many other Cases put in the Register of Remover of **B** this Plea into the Common Pleas at the Suit of the Tenant. As if the Lord take upon him for to maintain the Matter, to have Part of the Land. Or if the Tenant alledges Bastardy, or plead a Foreign Plea, or join the Mife upon the Grand Assize, &c. And when the Demandant hath removed the Plea by *Tolt* into the County, then the Demandant may remove the same (a) into the Common Pleas by a *Pone*, without expressing any Cause in the *Pone*. But the Tenant cannot remove it, without a Cause be expressed in the *Pone*.

*Recordare*  
Post. 7. E.

And it is a Rule, that a *Recordare* is not given to remove any Plea **C** in a Writ of Right, but for the Tenant. But *Pone* is given for the Demandant, but that ought to be out of the County-Court. And the Form of the *Pone* for the Demandant is such:

*Rex Vic', &c. salutem. Pone, ad petitionem Petent', coram Justiciariis nostris apud Westm' in Octabis Sanct' Trin' proxim' futur', Loquelam quæ est in Com' tuo per Breve nostr' de Recto inter A. Petent', & T. Tenent', de uno mesuag' cum pertin' in T. & summi per bonos Summi præd' T. quod tunc sit ibi, præf' A. inde responsur': Et habeas ibi Sum', & hoc Breve.*

And here is not said [and another Writ,] because the Original Writ of **D** Right Patent doth remain with the Demandant, and not with the Sheriff, &c. as do other original Writs.

And

(a) Note; In such Case the Plea may be removed into B. R. per Hankford; and there they may proceed thereon. 11 H. 4. 49.



And if the Tenant will remove the Plea out of the County by *Pone*, he ought to shew some Cause in the Writ ; and the Writ is such: *Rex Vic', &c. Pone coram Justic' nostris apud Westm' in xv. Sanctæ Trin' proxim' futur', Loquelam quæ est in Com' tuo, &c. ut supra; & dic' præf' A. quod tunc sit ibi, Loquelam suam versus præd' T. inde prosecut', s; voluerit: Et habeas ibi hoc Breve. Tesse, &c. Quia præd' A. duxit in uxor' W. Con-sanguineam Vic', &c. propter quod idem Vic' favet, &c. fiat Executio, &c. ut supra.*

**E** And in a Writ of Right in a Court-Baron, if a foreign Plea be plead-ed, or the Mife is joined to be tried by the Grand Assize ; (a) now if the Bailiffs will proceed, the Tenant may have a Prohibition directed unto them, which shall inhibit the Bailiffs to hold the Plea. Or he may inhibit the Lord himself, that he shall not hold the Plea, &c. And also such Writ shall be directed unto the Sheriff, forbidding him to hold Plea in the County-Court upon the Writ of Right after such Pleas pleaded ; and if they do proceed, he may sue forth an *Alias*, and a *Pluries*, and an *Attachment* against them. Prohibition.

**F** And it is to know, that if the Lord or Bailiffs do cease to pro-ceed in the Plea by Reason of such Writ of Prohibition, then when the Justices in Eyre come into the County for all Pleas, the De-mandant may come into the Chancery by the Record of the Writ of Prohibition, which issued before out of the Chancery, which is always enrolled in the Chancery ; and thereupon he shall have a Writ directed unto the Sheriff, to summon four Knights to chuse the Grand Assize upon the Writ of Right which is in the Lord's Court, or in the County. And the Writ of choosing the Grand Assize shall be such:

(b) *Rex Vic', &c. salut'. Summ' per bonos Summ' iv. legales Milites de Com' tuo, quod sint coram Justic' nostris ad primam Ass' cum in partes illas venerint, ad eligend' super sacram' suum xii. de legal' Militibus de visu' de N. qui melius sciant & velint dicere veritat', ad faciend' Recogn' magnæ Assis' nostræ, inter A. Petent' & B. Tenent', de uno mesuag' cum pertin' in N. unde idem B. qui tenens est, posuit se in magnam Assis' nostram, & petiit Recognitionem fieri, uter eorum majus jus habeat in mesuag' predict' & summ' per bonos Summ' predict' B. quod tunc sit ibi, auditurus illam election' : Et habeas ibi nomina predict' Militum, & hoc Breve.* And when the Plea is in the Common Pleas, then this Writ of *Magna Assisa eligenda* shall issue out of the Common Pleas, and is judicial: But in the Case before, it shall issue out of the Chancery, without paying a Fine. And if the [5.]

**A** **B** Demandant sue a Writ of *Præcipe in Capite* in the Common Pleas for Lands holden of another Lord than of the King, then the Lord of whom the Lands are holden, may sue forth a Writ directed unto the Justices Ant. 3. D.

(a) See this otherwise in the Court of antient Domesne, where in a Writ of Right Close sued, in Nature of a Writ of Right Patent, a Jury was returned there instead of the Grand Assize. 2 Mar. Dyer 111.

(b) Note, The *Milites* or Knights ought to be *gladiis cincti*, otherwise 'tis Cause of Challenge. See *Trin. 6 Eliz. Moor's Reports* 67. *Squire and Read.*

Justices of the Common Pleas, rehearsing how that the Land is holden of him, commanding them to proceed no further, &c.

Ant. 1. B.

And as before is said, none can sue or maintain such *Writ of Right Patent*, but they who have an Estate in Fee-simple, as Tenant in Fee-simple, or Abbot, or Prior, or Bishop, or Master of an Hospital; and a Body Politick, as Mayor and Commonalty, or Bailiffs and Commonalty, &c. and such Bodies Politick may have such Writs for their Possessions. But Parsons, Vicars, or Chantry Priests, or Prebendaries, who have Patrons and Ordinaries over them, cannot maintain this *Writ of Right Patent*, but another Writ which is called *Juris Utrum*; the Nature of which Writ shall be after expressed.

If a Man bring a *Writ of Right Patent* as Heir unto his Ancestor, he ought to lay the Seisin and Esplees, as in Pernancy of the Profits of the Lands in his Ancestors. And if an Abbot, Bishop, or such Body Politick, bring such Writ, he ought to lay the Seisin of the Esplees as in Pernancy of the Profits in themselves, or in their Predecessors. And for the Residue of this Matter touching the *Writ of Right Patent*, and the Count, and the Bars, and all the Circumstances thereof, see the Title of *Droit* in the Abridgments.

*Præcipe in Capite*

Ant. 3. D.

And note, That a Writ of Right, which is called *Præcipe in Capite*, is no *Writ of Right Patent*, but is a Writ of Right Close, and shall be directed unto the Sheriff of the County, and lieth where the King's Tenant, who is seised in Fee-simple of Lands holden of the King in Chief as of his Crown, and not of the King as of any Honour, Castle, or Manor, but merely of the King as of his Crown, who is a Lord in gross, (because it is holden of him who is always King) is deforced, &c. And this Writ is as high in its Nature, as the *Writ of Right Patent*; and no Person can sue this Writ, if he hath not an Estate in Fee-simple of his own Possession and Seisin, or if the Seisin of his Ancestor or Predecessor.

31 H. 8.

Dyer 44, 45.

And it lieth also where Tenant in Fee-simple of any Lands or Tenements, who holdeth such Land or Tenement of the King in Chief as of his Crown, and not of the King as of any Honour, Castle, or Manor, loseth his Lands or Tenements by Default in a *Præcipe quod reddat*: Now he or his Heir may have this Writ of Right, of *Præcipe in Capite*, against the Tenant of the Freehold of those Lands or Tenements. And this Writ shall be Close, and shall be directed unto the Sheriff, and returnable in the Common Pleas before the Justices there: And in this Writ he ought to lay the Seisin in himself, or in his Ancestor or Predecessor, in the same Form as he shall do in a Writ of Right.

Rex Vic' Not', &c. Præc' A. quod juste, &c. redd' B. unum mesuag' cum I. pertin' in D. quod clam' esse jus & hereditat' suam, & tenere de nobis in capite, & unde queritur quod prædict' A. ei injuste deforc', &c. Et nisi fec', & prædict' B. fec' te secur' de clam' suo prosequend', tunc summ' per bonos Sum' prædict' A. quod, &c. Or thus, if an Abbot or other spiritual Persons sue the Writ; *Quod clam' esse jus Ecclesiæ suæ Sanctæ Mariæ de N. & tenere de nobis in capite, & unde queritur, &c.*



**K** And by this Writ it fully appears, that Lands which are holden of the King as of an Honour, Castle, or Manor, are not holden *in Capite* of the King, because that the Writ of Right in such Case shall be directed unto the Bailiff of the Honour, or Castle, or Manor to do Right, &c. But when the Lands are holden of the King as of the Crown, they are not holden of any Manor, Castle, or Honour, but merely of the King as King, and of the King's Crown as of a Seigniorie (a) by it self in gross, and in Chief above all other Seigniories. And thereof it followeth, that there are many Errors and erroneous Opinions at this Day in the suing of Liveries, and finding of Offices, and determining which Lands shall be taken to be holden of the King in Chief, and which not; and therefore *Quære* to know the Truth.

Bro. Livery 57.  
Prerog. R. 29. B.  
V. 21 E. 3. B. Tenures, 16.  
33 H. 8. 52.  
there are some Honours of which Lands are holden *in Capite*.  
Dyer 45.

**L** In *Præcipe in Capite* the Tenant shall not plead that the Tenements are not holden of the King, although the Writ doth so suppose; but he ought to take the same by Protestation, and plead other Matter in Bar, if he have any Matter to plead.

38 E. 3. 13.  
Br. Droit de reſte 9.  
F. Droit 5.

**M** And in a Writ of Right he ought to count of his own Seisin, or of the Seisin of his Ancestor: And if he count of the Seisin of his Ancestor, he may alledge the Seisin in the Time of King *Richard* the First, but the Seisin is not traversable: But the Tenant may tender a Demy-Mark to enquire of this Seisin, &c. And if it be found with the Tenant, that the Ancestor was not seised, the Demandant shall be barred. But if the King be Party Demandant, the Tenant cannot tender the Demy-Mark to enquire of the Seisin, but ought to plead in Bar; and there the Tenant shall have no Impar lance without the Assent of the King's Sergeants. And it seems reasonable, if the Tenant in a *Præcipe quod reddat* lose by Action tried, that yet he shall have a Writ of Right.

Litt. 114.

**N** And so if the Demandant be barred in an Assize of *Mortdauncester* brought by him, or other real Action, as a Writ of *Entry sur Disseisin*, &c. or the like Writ, and is barred by Action tried, yet he shall have a *Writ of Right Patent*, or *Præcipe in Capite*, if the Lands be holden of the King in Chief: And so it seemeth, if a Man lose by Default in a Writ

4 Co. 43.

[6.]

5 Co. 86.

If the Tenant

after the Mise joined maketh Default, final Judgment upon that Default shall not be given, but a *Petit Cape* shall issue; for peradventure he may save his Default: But Judgment final, where it ought not to be in a Writ of Right, shall bind until it be reversed.

C 2

of

(a) *Note*, M. 30 H. 8. Dyer 44. A Tenure in Chief (1) ought to be held of the King, and created by him. (2.) It ought to be held of him as of his Person. And (3.) *per* Dyer 45. The King by no Means can grant or sever the Tenure and *Seigniorie* in Chief from the Crown. The King purchases a Mesnalty, yet the Tenant shall hold as before: So if he forejudge the Mesne, &c. he shall hold as the Mesne held. The King grants Land in Tail, and

after confirms it to hold of him by a Penny, &c. The Grantee shall notwithstanding hold it in Chief, although there are these Words added, *Et non in Capite*; and if he grant the Reversion, both the Tenure and the Services shall remain to the King. See the Tenure of the Honour of *Plympton*. 36 H. 8. Dyer 58. The Tenure of the Honour of *Gloucester*; and *Note*; The Tenure of the Principality of *Wales*, is not the same. Dyer 344.



of Right (a) before the Mife joined, yet he shall have a Writ of Right against him who recovereth. But after a Mife joined it is otherwise; for then upon Default after Issue joined, the Judgment shall be final, as well against the Demandant by his Nonfuit, as against the Tenant, if he make Default after.

This must be intended of a Rent-Service, for of

And a Man shall have a *Writ of Right Patent* of a Rent as well as of A Land.

a Rent-Charge or Seck, no Writ of Right lies; *per Herle.* 45 E. 3. F. Droit 32.

## Writ of Right in London.

**W**RIT of Right Patent in London lieth of Lands, or Tenements within the City, &c. by him who claims an Estate in Fee-simple in the Lands and Tenements, and not by him who claims an Estate for Life, or in Tail, or in Dower, or by the Courtesy. For if Tenant in Fee-simple loseth his Lands in London by Default, or by Verdict, it seemeth

\* Judgment in a Writ of Right, *vide ante* pag. 1 and 2. & *infra* †.

(a) The Demandant imparls on the Voucher of the Tenant and returns (into Court) and the Tenant was demanded and made Default, and Judgment given against him *quia recessit in Curia contempt.* 38 E. 3. 13. and so of the Demandant if he imparls, &c. after the Mife joined. 13 E. 3. F. Judgment 169. and the like of the Tenant. 11 E. 3. F. Judgment 126. Judgment final is given on a Departure in Despite of the Court. 53 E. 3. F. Judgment 252. But not on a Default in a Petit Cape after the Mife joined. 12 E. 2. F. Judgment 235. So Judgment final is given on a Confession after the Mife joined, but not before. 13 H. 4. F. Judgment 245. 33 E. 3. *ibid.* 253.

Where the Tenant vouches, final Judgment shall not be given against the Vouchee, except he be Tenant to him that vouches him, though it be after the Mife joined, *per Bingham.* 13 E. 3. Judgment 152. *contr.* 14. E. 3. *ibid.* 154. See Judgment against a Prebend. 12 E. 3. Judgment 163. against a Baron and Feme; and yet the Feme shall afterwards have a *Cui in vita.* 33 E. 3. *ibid.* 252. It shall not be against the King. *Ibid.* Judgment 232. See Judgment final given after the Champions were brought, and at another Day given, the Tenant made Default; but the Demandant appeared with his Champion. 29 E. 3. 12. and so is 1 H. 6. 7.

† Note; If the Tenant tenders the Mife, either by grand Assize, or Champion, and the Demandant imparls thereupon, and at the Day the Tenant makes Default; Judgment final shall be given *quia recessit in Contempt Cur.* 3 H. 6. 55. 10 H. 6. 2. and so is the Case to be intended. 44 E. 3. 28. *Vide supra* \*. So if after the Mife is joined by Champion, the Tenant appears without his Champion. 12 H. 7. 10. But if the Mife is joined by grand Assize or Battle, and afterwards the Plea is put without Day, *i. e.* discontinued; and then upon a Resummons, the Tenant afterwards makes Default, Judgment final shall not be given. 3 E. 3. 5. 1 E. 3. Also if the Mife is joined by grand Assize, and at the Day of *Nisi prius*, &c. the Tenant makes Default, a Petit Cape shall issue; and if at the Return thereof the Tenant does not come in, nor save his Default, Judgment final shall (not) be: But if the Demandant makes Default at any Day after the Mife joined, Judgment final shall be given against him. See 12 H. 7. 10, or 20. Dyer 98, 103. 5 Co. 86. a. See 3 E. 3. 29. If in a Writ of Right against Baron and Feme, they tender the Mife, and the Demandant imparls thereupon, and afterwards makes Default, Judgment final shall be given.

Note; Where 'twas against Baron and Feme, and before the Mife accepted. 11 E. 3. F. Judgment 126. 13 E. 3. *ibid.* 109. *acc.* where the Termor was received. And 14 E. 3. 151. *Simple.* *Vide post.* [11.] D. E.

seemeth that he shall have a Writ of Right of those Lands directed unto the Mayor and Sheriffs, and it shall be in the Nature as a *Writ of Right Patent*. And the Form of the Writ is such :

C *Rex Majori & Vicecom' Lond' salut' Præcipim' vobis, quod sine dilatione plenum rectum teneatis E. de N. de uno mesuag' & duobus shoppis cum pertin' in Lond', quæ clamat tenere de nobis per liberum Servic', &c. quæ W. ei deforceat, ne amplius inde clamorem audiamus pro defectu recti. Teste, &c.* And it shall not be said in this Writ, *Et nisi feceris, Vicecomes talis Com' faciet, &c.* because the Writ is as well unto the Mayor of the said City as unto the Sheriff.

And the *Writ of Right Patent*, which shall be directed unto another City or Borough, shall be of like Form as the Writ aforesaid is, as appeareth by the Register, thus :

*Rex Majori & Ballivis suis Oxon' salut'. Præcipimus vobis, quod sine dilatione plenum rectum, &c. E. de C. de viginti solid' redditus, & pastur' ac sexdecim boves cum pertin' in N. quæ A. de B. ei deforceat, &c.*

D And because that the Lands and Tenements within Cities and Boroughs are holden of the King in Burgage Tenure, it behoveth that the *Writ of Right Patent* be directed unto the said Mayor and Sheriffs, or Bailiffs, as Bailiffs and Officers of the King, as if Lands were holden of the King as of an Honour, or Castle, or Manor.

*Burgage Tenure.*  
*Note ; All the Lands, &c. within the*

City of London, and the Liberties thereof, are held in Free Burgage, without any Mesnalty. *Privileg. Lond. 72.*

E And also upon a Writ of Right sued in London, the Plea shall not be removed by (a) *Tolt*, or *Pone*, or *Recordare*, as another Writ of Right sued in the Court of another Lord shall be. But if the Tenant, in the *Writ of Right in London*, vouch a Foreigner to Warranty, the Demandant shall come into the (a) Chancery, and shall sue a *Summ' ad warrantizandum* in the Common Pleas before the Justices at a certain Day, and another Writ unto the (b) Mayor and Sheriffs, to send the Record before the said Justices at the same Day, &c. and then the Mayor and Sheriffs do adjourn the Parties before the Justices of the Common Pleas at a certain Day ; and also, at the same Day, shall send the Record which is before them before the said Justices ; and when the Justices have determined the Warranty, they shall (a) send back the Record by Writ, which shall issue out of the Rolls of the Justices, directed unto the Mayor

(a) N. B. That at Common Law the Record was removed by a Writ out of Chancery, and after the Warranty determined, it was remanded back, *per Hankford. 14 H. 4. 26.*

(b) See the Power of the Justices on such Removal of the Record. 44 E. 3. 2. They may record an aid Prayer for the Tenant, and remand the Record. 18 E. 3. 1. They may grant a Resceit to the Wife, on a Departure of the Husband, in Despight of the Court. *Contra 31 E. 3. F. Resceit 125.* But

they cannot give Judgment upon a Default. *Ibid. 41 E. 3. 31. 42 E. 3. 1.* Nor give Judgment upon a Confession ; nor take an Issue between the Tenant and Vouchee ; nor enter the Confession, &c. 18 E. 3. 1.

A Vouchee cannot plead in Bar, but may vouch over a Foreigner, *per Kelf. contra Stouff. and 49 E. 3. 31. per Wich. and Bile. See 41 E. 3. 31. and 49 E. 3. 21.* They cannot try a new Issue pleaded by the Tenant to the Writ.



Mayor and Sheriffs, commanding them to proceed in the Plea within the said City. And the same is by the Statute of *Gloucester de Forins' vocat' ad Warrantum*, cap. 12. And so it shall be done if the Tenant plead a foreign Plea, (a) the Plea shall be removed as aforesaid, and when the Matter (a) of the Plea is determined, then shall it be sent back unto the Mayor and Sheriffs, as aforesaid, by the Equity of the said Statute.

And by the Rule in the Register, every *Præcipe quod reddat* of Plea of Lands or Tenements in *London* shall be directed unto the Mayor and Sheriffs jointly: But every other Writ shall be directed unto the Sheriffs only.

V. 18 E. 3. 8. And now it is a common Opinion, That if a Man hath Title to have F  
4 E. 6. 59. a *Formedon* of Lands or Tenements in *London*, or any other Action real, as a Writ of *Entry sur Disseisin*, or other Writ whatsoever of Lands or Tenements, he ought to sue this *Writ of Right Patent* (b) directed unto the Mayor and Sheriffs of *London*, that they shall do Right, &c. and that the Demandant, upon this Writ, shall make his Protestation to sue it in the Nature of what Writ he will, as a Man shall do upon a Writ of *Droit Close* sued in antient Demesne. But it seemeth the Law shall not be so; for this Writ is a *Writ of Right Patent*, which is directed unto the Mayor and Sheriffs, as other Writs directed unto another City or Borough are. And I have not heard that a Man shall make Protestation to sue such Writ Patent in the Nature of what Writ he will. But the City of *London*, by their Custom, have Power to hold Pleas of Lands within the City by other the King's Writs as well as by *Writ of Right Patent*, and that appeareth by the Register.

7 H. 6. 32. (c) And it appeareth, that *London* is not antient Demesne; for then G  
ac. 37 H. 6. the Writ of Right, which shall be directed unto the Mayor and Sheriffs, should be *Close*, and not *Patient*. And it appeareth by the Register, in the Title of *Juris Utrum*, that a *Juris Utrum* was sued of Tenements in *London* returnable before the Justices of the Common Pleas:  
27. But  
Plow. 124.  
Staundford,  
contrary.

And also it appeareth in the Register, in the Title of Writs of Waste, in the End of the Title; that a Writ of *Partic' facienda* was directed unto the Mayor and Sheriffs of *London*, to make Partition of Tenements in *London*; and also there followeth a Writ of *Estrepement*, sued and

(a) *Id est*, In a Plea real, but not in a Plea personal, *per Frisby*. 3 H. 4. 12. But on a foreign Plea pleaded in a Plea real or personal, it shall be removed to be tried, and afterwards remanded by the better Opinion, *ibid*. And so it is on a foreign Plea pleaded in a Court Baron, or antient Demesne, or County Palatine. 14 H. 4. 25. 26. 22 H. 6. 48. *Lib. litrat* 229. But it is otherwise, if a Resummons be sued out of a Court which has Conuance, on a foreign Plea; *per Cur*. 14 H. 4. 25. See *per Norton and Hall*, a foreign Issue joined in Debt, brought in Court Baron, or other Court which may hold Plea thereof, or in a Suit by Bill by a Copyholder; it shall not be tried here (in *Westminster Hall*) contra of a

Writ of Right brought in the Court of the Lord. 1 H. 5. 12. *Qr*. 264.

(b) See a *Formedon* of Lands in *London*. 43 E. 3. 21. So, a Writ of Right in the Hustings there, and Protestation made, in Nature of a *Formedon*. 18 E. 3. 8. See also 3 H. 4. 12, 19. A foreign Plea pleaded in a *Formedon* in *London*, shall be removed to be tried (here,) and after Trial remanded to be adjudged (there.) 14 H. 4. 25.

N. B. 18 E. 3. 8. The Writ of Right was sued in Nature of a *Formedon* in Descender in *London*. See 4 *Instit*. 147. And no Writ lies of Lands in *London*, but in *London* only. 1 *per* 3. 7.

(c) Note; In 7 H. 6. 32. it is certified that *London* is not antient Demesne.



and directed unto the Sheriffs of *London*, upon a Writ of (a) *Juris Utrum* [7.] depending before the Justices of the Common Pleas, of Tenements in *London*.

A And it appeareth in the Register, a Writ of *Justicies* of Dower sued in *London* for Lands in *London* was directed unto the Mayor and Sheriffs of the City, and a special Writ for the Heir in Tail for Lands in *London* directed unto the Mayor and Sheriffs there, upon a (b) Devise made of the Lands unto his Ancestors in Tail, &c. And the like Writ for him in the Remainder in Tail, and also for him in the Reversion. And the like Writs upon Devises made in other Cities and Boroughs by some Persons to others, &c. And these Writs are in the Register after the Writ of *Formedon* in the Remainder. *Fol. 244.*

And by these Writs it appeareth, that a *Writ of Right Patent*, which is directed unto the Mayor and Sheriffs of *London*, is not such a Writ as a Man shall declare thereupon in the Nature of what Writ he will, &c. as it shall be upon a Writ of *Droit Close* sued in antient Demesne; but that it behoveth to sue in *London* his Writ in the Nature of such Writ as his Case requireth, &c. But *Quære veritatem* of that which was used in antient Times in *London*.

B And it appeareth in the Register, that the King shall have a Writ of Escheat returnable into the King's Bench, for Lands in *London* escheated unto the King; and by the same Reason another Man shall have a Writ of other Nature, there, returned in the Common Pleas. *Quære*; For the King hath a Prerogative in this Matter before others, to sue in what Court he will; but he cannot alter or change the Nature of the Writ, otherwise than the Law giveth the same to him; (c) and therefore *Quære* of this Matter.

C There is also another Suit which lieth in a City or Borough for Lands or Tenements, by Usage and Custom of the City, and that is by Bill without any Writ out of the Chancery; and the same is called a Bill of *Fresh Force*, or an Affize of *Fresh Force*, and lieth only where a Man is disseised of his Lands and Tenements in any City or Borough, or deforced of any Lands or Tenements after the Death of his Ancestor, or after the Death of his Tenant for Life, or in Tail, or in Dower, or the like; now within xl Days after the Title accrued unto him, he may sue this Bill of *Fresh Force*, and shall make Protestation to sue in the Nature of what Writ he will, as Affize de *Mortdauncestor*, or Affize of *Novel Disseisin*, or *Intrusion*, or of *Formedon*, or in the Nature of any other Writ,

(a) See a *Juris Utrum* of Tenements in *London* challenged; for that their Franchise is, not to implead or be impleaded without their City Walls *M. 16. Ed. 3.*

(b) See the first Charter of *Ed. 3.* to *London*; the Citizens of *London* being Freemen, may devise their Lands there in Mortmain; and this seems to be an antient Custom there. See *Cro. Car.* 48 and 57. And by the Custom of *London*, he who holds Lands there jointly with others, may de-

vise that which belongs to him, without any other Severance. See 49 *E. 3. London*. And by the Custom there, all the Lands and Tenements, Rents and Services within the said City and Suburbs are devisable. So that the Freemen and Women of the said City, may by the said Usage devise them to whom, and for what Estate they will. See *Calthorp's Cases* 103, 104. *W. B.*

(c) Here the Words *and others* are added to the Original.

Writ, as his Case doth require: But after the xl Days past after the Title accrued unto him, he ought to sue a Writ out of the Chancery, directed to the Mayor and Sheriffs of *London*, as the Case lieth.

And also it appeareth by the antient Treatise of *Natura Brevium*, that D if a Foreigner sue an Assize, or other *Præcipe quod reddat* of Lands in *London* in the Common Pleas, &c. that the Mayor and Sheriffs, &c. (a) may demand Conufance, &c. And therefore it seemeth, if they do not demand Conufance of the Plea, but suffer the Recovery to pass in the Common Pleas before the Justices, that then the Recovery is good in the Common Pleas for the Lands in *London*. And when the Mayors and Bailiffs shall demand Conufance of Pleas, and when not, and when they have surceased their Times, appeareth in the Title *Conufance*, in the Abridgments more at large; and therefore see there.

### *Writ of Right of Dower.*

THE *Writ of Right of Dower* is Patent, and shall be directed unto E the Heir, to sue in the Court of the Heir as it appeareth by *Britton*. And where the Writ is directed unto the Heir of the Husband, and the same Heir is seised of the Land whereof the Wife demandeth Dower, then if he will not assign Dower unto the Feme, the Feme who is Demandant may remove the same by a *Tolt* into the County, and also may remove the same out of the County into the Common Pleas by a *Pone*, &c. without shewing of any Cause in the Writ, as the Demandant shall do in a Writ of Right Patent. But the Tenant in a Writ of Right Patent shall not remove the Plea out of the County into the Common Pleas, without shewing of Cause in the *Pone*. And the Tenant in a Writ of Right Patent, or in a *Writ of Right of Dower*, may remove the Plea into the Common Pleas by a *Recordare* out of the Court of the Lord, upon Cause shewed in the Writ. And what Causes are sufficient and good to remove the Plea out of the Lord's Court, or out of the County, and what not, does appear in the Register; and therefore see the Causes there. But the Demandant cannot remove the Plea out of the Court of the Heir by a *Pone*, because he ought first to remove it by a *Tolt* into the County, and from the County he may remove it into the Common Pleas by a *Pone*, without shewing of Cause in the Writ, as before is said.

And in a Writ of Right Patent the Plea may be removed at the Tenant's Suit by a *Recordare*, out of the Lord's Court, into the Common Pleas, before the Justices there: And by the same Reason it seemeth that it may be removed at the Suit of the Tenant, in a *Writ of Right of Dower*, out of the Heir's Court into the Common Pleas, before the Justices there, by *Recordare*, for good Cause. But *Quære*.

(a) See *per Pult.* That they have not Conufance in Pleas (or Suits) real, but only in Pleas personal. *M. 16 Ed. 3.*

*Tolt*, ant. 3.  
F. G.

Ant. 4. B.



F And if the Husband do enfeof a Stranger of all his Lands, and dieth, and his Heir hath nothing by Descent; now if the Feme be to sue forth a *Writ of Right of Dower*, it seemeth she shall sue her *Writ of Right of Dower* directed unto the same Feoffee, &c. for after the Endowment the Feoffee shall be her Lord, and she shall hold this Dower of him by Fealty. But before the Statute *de Quia Emptores terrarum*, if the Husband enfeof a Stranger of Parcel of his Lands, &c. to hold of him, then if the Feme be to sue a *Writ of Right of Dower* against the Feoffee, the Writ shall be sued in the Heir's Court, and the Writ shall be directed unto the Heir, for the Seigniori that remaineth in him. [8.]

A And so if the Husband at this Day giveth Parcel of his Manor in Tail to hold of him, and dieth, the Feme shall sue her *Writ of Right of Dower* in the Court of the Heir of her Husband against the Donee in Tail, and the Writ shall be directed unto the Heir: But if the Husband make a Gift in Tail of all the Lands that he hath, and dieth, and the Feme is to sue a *Writ of Right of Dower* of that Land; then the Husband's Heir cannot have any Court, because he hath but a Seigniori in gros; and therefore it stands with Reason that she should have her *Writ of Right of Dower* against the Donee in Tail directed unto the Sheriff, retornable in the Common Pleas, and she shall have this Clause in the Writ: *Quia B. capitalis Dominus Feodi illius, nobis inde remisit Curiam suam.*

B And so if the Husband make a Lease of all his Lands unto a Stranger for Life, and dieth, and the Feme is to bring a *Writ of Right of Dower* against the Lessee for Life; then it seemeth reasonable that the Feme have her *Writ of Right of Dower* against the Lessee for Life in the Common Pleas, because that he in the Reversion hath not any Court. And although that this Clause, *viz. Quia B. capitalis Dominus, &c.* be put in the Writ, if the Lord have not any Court to hold, because it is a Seigniori in gros, and not any Demesne Land to hold a Court, &c. then, although the Lord did never remit his Court, and that there is not any Matter apparent or remaining in the Chancery, to prove the Lord's Will and Assent to remit his Court, yet the Writ returned into the Common Pleas, before the Justices there, is good; and they shall proceed thereupon, if the Lord hath not any Court to hold Plea for this Matter. And it seemeth that the Lord shall not have his Action against the Demandant for suing the Writ in the Common Pleas, if he have no Court to hold Plea thereupon, and to do Right unto the Party. But if the Lord hath a Court to hold Plea, then he may have a Prohibition to the Justices of the Common Pleas, that they do not proceed upon the Plea, otherwise not. *Quare* of this Matter.

C And this *Writ of Right of Dower* lieth where a Feme is endowed of Parcel of her Dower; and she would demand the Residue against the same Tenant, and in the same Town, then she ought to shew this *Writ of Right of Dower*; for the Words of the other Writ will not serve, *viz. unde nihil habet*, because that she hath received Part of her Dower; and therefore of Necessity it behoveth her to sue this *Writ of Right of Dower*, to recover the Residue; and the Writ shall be directed unto the Heir, or unto his Guardian, if he be in Ward, as a Writ of Right Patent shall be, &c.

And if a Feme lose her Land which she holdeth in Dower by Default **D** in a *Præcipe quod reddat*; yet according to (a) the Opinion of some Men, she shall have a *Writ of Right of Dower*. But it seemeth, by the Equity of the Statute of *West. 2. cap. 4.* that if a Feme lose by Default the Land whereof she hath had Dower, that by that Statute she shall have a *Quod ei deforceat* to recover the Land; and before that Statute she had no Remedy for to recover the Land, but only an Action of *Disceit*, if she were not summoned in this *Writ of Right of Dower*.

And if a Feme hath a Dower, and lose the same by Assise, or Action **E** tried, it seemeth she hath not any Remedy but only by Attaint; for it seemeth that she shall not have Remedy to recover by a *Writ of Right of Dower*, because she had the Land once assigned unto her in Dower, and she was in Possession of the same, so that the Title was executed, and she ought to sue an Action of her own Possession, if she be afterwards deforced. *Tamen Quære*. And after the Plea removed unto the Common **F** Pleas, the Proceſs is then *Grand Cape* and *Petit Cape*. And in the Heir's Court the Manner is to make a Precept in the Nature of Summons, and of *Grande Cape* and *Petit Cape*, and the Writ directed unto the Heir is such:

*Rex A. salutem. Præcipim' tibi, quod sine dilatione plenum rectum teneas* **G**  
**B.** *quæ fuit uxor C. de tertia parte decem acr' terr' cum pertin' in W. quam clamat tenere de te in dote, per liberum Servic' tertiæ partis unius denarii per annum pro omni Servic', quam C. ei deforceat, &c.*

And also a Feme may have a *Writ of Right of Dower* of the Moiety, **H** according to the Usage of *Gavelkind*, where she hath received Part, and is deforced of Part. And it also appeareth by the Register, that the **I** Feme shall have a *Writ of Right of Dower* directed unto the Heir himself, where he himself deforceth her of the Profits of an Office; and the Writ is such:

*Rex A. salutem. Præcipimus tibi, quod plenum rectum teneas* **A. & R. K**  
*uxor' ejus, de tertia parte (b) exituum provenient' de custodia Gaolæ Abbatiæ Westm' & de tertia parte trium rodarum terræ, unius rodæ prati, & redditus tot panum, & tot lagenarum cervis' vel tot ferculorum per diem, vel per septimanam, vel per annum, cum pertinen' in Vill' Westm' quas clamat pertinere ad liber' Tenementum suum, quod tenet in dote ipsius R. in ead' Vill', & tenere de te per liber' Servic', invenienda' tibi tertiam partem custod' pro custodia Gaol' prædict', & portæ ejusdem Abbatiæ, pro omni Servic', qu' tu ipse eis deforc', &c.*

(a) See accordant herewith *Jon. Rep.* 381. **1 Cro.** 445. And in such Case the Writ mentions their Estates. *W. B.*

(b) See 15 *E. 3. F. Dower* 81. Dower demanded of the Profits arising from a Fair. See 11 *E. 3. F. Dower* 85. Dower demanded of the Moiety of a Stallage arising from a Fair, and held good, without saying a Moiety of the Profits of the Stallage; for the Stallage is the Profits. *Vid. Lib. Intra. on.* 234. *de tertia parte exituum & proficuum de quodam Mer. ato quolibet die Martis, & unius Fe. 3. quolibet Anno in Festo, &c.* 12 *E. 3. F.*

*Dower* 90. A Demand of the third Part of the Profits of the Office of a Bailiff, Parker, &c. without demanding a third Part of the Office itself; which cannot be, because the Office is entire. *Quære*, of the Office of Tentury, *ibid.* See 45 *E. 3. F. Dower* 50. where a Feme was endowed of the third Part of the Profits of a Mill, and had (thereby) the Freehold of the third Part of the Mill vested in her. See 21 *E. 3.* 57. Dower of the third Part of the Office of the Marshallsea.



- A And by this it appeareth, that a Feme shall have a *Writ of Right of* [9.]  
*Dower* of that Thing which is appendant or appurtenant unto the Land Vide infra l.  
 which she holdeth in Dower, &c. if she be deforced thereof. accord.

*Writ of Right de rationabili parte.*

- B A Writ of Right *de rationabili parte* always lieth betwixt Privies in  
 Blood, as betwixt Brothers in *Gavelkind*, or betwixt Sisters and  
 other Coparceners, as Nephews and Nieces, and lieth for Lands in Fee-  
 simple: As if the Ancestor lease his Lands for Term of Life, and dieth,  
 and hath issue two Daughters, and afterwards the Tenant for Life dieth,  
 and one Daughter entreth into the whole Land, and deforceth her Sister  
 of the Land; her Sister shall have this Writ of Right *de rationabili parte*:  
 And so if the Ancestor was disseised of Lands, and dieth, and one Sister  
 entreth into the Land, and deforceth her Sister thereof; the Sister who  
 is deforced shall have this Writ against her other Sister. And so two or  
 three may sue this Writ against the fourth Sister, or the Aunt, and the  
 Niece may sue this Writ against that Sister which deforceth her of her  
 Part, &c. And this Writ lieth as well upon a dying seised of the An-  
 cestor, if one Sister enter upon all, and deforce the other Sisters, as where  
 the Ancestor doth not die seised: And the Writ is a *Writ of Right Pa-*  
*tent*, and shall be directed to the Lord of whom the Lands are holden,  
 as other *Writs of Right Patent* shall be, and shall be removed by *Tolt* and  
 other Writs, as the Common *Writ of Right* shall be. But Grand Assise, nor Nat. Brev.  
 Battail shall not be joined in this Writ, for the Privy of the Blood that 119.  
 is betwixt them. Neither shall this Writ be sued against a Stranger, and Post. 197.  
 if it be it shall abate. And if the Ancestor die seised, and one Sister en-  
 treth into all the Land, and deforceth her Sisters, the others may sue  
 this Writ of Right *de rationabili parte*, or a *Writ of Nuper obiit*, at  
 their Election. And so it is for Lands in *Gavelkind*; if one Brother entreth  
 into all the Lands, and deforceth his Brethren, they may sue this Writ  
 of Right *de rationabili parte*, or a *Nuper obiit*, if the Ancestor die seised:  
 But if the Ancestor doth not die seised, then they ought to sue this Writ  
*De recto rationabili parte*. But against a Stranger, it behoveth to sue Nat. Brev.  
*Assise de Mortdauncester*, upon the Death of their Ancestor, or other Writ 119.  
 (as their Case shall require) of the Seisin of their Ancestor. And the  
 Form of the Writ of Right *de rationabili parte* is such:

- H Rex A. B. salutem. Pracipim' tibi, quod sine dilatione plenum rectum te-  
 neas W. F. de decem acris terræ cum pertin' in B. quas clamat esse rationa-  
 bilem partem suam, quæ eam contingit de libero tenemento quod fuit I. patris,  
 vel matris, avunculi, vel amitæ, consanguinei sui, in ead' villa, & tenere  
 de te per liberum Servic' terciæ partis, vel quart' partis unius denarii per an-  
 num pro omni Servitio, quas B. & S. ei deforceant.

And by the Register, in this Writ, a Man may see what Rent and Ser-  
 vices all the Land which is partible betwixt the Sisters shall yield and  
 pay unto the chief Lord, and accordingly put every one of the Heirs to  
 her Part. So if there be one Demandant, and two Deforceants, then  
 thus: *Quod clamat tenere de te per liberum Servitium terciæ partis tanti per*

*Annum.* And if there be two Demandants, and two Deforceants, then thus: *Quod clamat tenere de te per liberum Servic' medietatis*; or *Duarum Partium tanti per Ann. pro omni Servitio.* And if the Land be holden by 4 d. per *Annum* and Fealty, and there are two Demandants, and two Deforceants, then the Writ may be: *Quod clamat tenere de te per liberum Servic' duorum denar' per Ann' pro omni Servic', &c.*

And if there be two Sisters, and after the Death of the Ancestor they enter and occupy in common as Coparceners, and one of them deforce the other Sister to occupy that which is \* appendant or appurtenant to the Tenement which they have in Coparcenary; then she who is deforced shall have a Writ of Right *de rationabili parte*, against her Sister, of that which is so appendant or appurtenant, and the Writ for that shall be such: *Quod clamat pertinere ad liberum Tenementum suum quod de te tenet in eadem villa, & tenere debet de te per liber' Servic' tanti pro omni Servic' quod W. &c.* And in this Writ he shall make his Demand of a certain K Portion of Land, as to so much as his Plea doth amount unto, to hold in Severalty; as if the Ancestor die seized of twenty Acres, and hath two Daughters, and one entrench into the Whole, and deforceth her Sister; the other Sister shall demand by her Writ, ten Acres of the twenty Acres, because that such is her Part; and by this Writ if she recover, she L shall have Judgment to recover ten Acres, to hold in Severalty, as her Part doth amount unto (a).

And this Writ of Right *de rationabili parte* ought to be brought against M all the Coparceners that hold the Land, &c. and by all those that are deforced of the Land, as it appeareth by *Britton*: And Voucher and View N do not lie in this Writ, because of the Privy of Blood; but in a *rationabili parte* the View was granted H. 15 H. 5. because that the Ancestor did not die seized, &c. And Nontenure is no Plea in this Writ by *Britton*, &c. And the Process in this Writ, after it is removed into the O Common Pleas, is *Summons*, *Grande Cape* and *Petit Cape*; and in the Lord's Court the Manner is to make Process in the Nature of *Grand Cape* and *Petit Cape*, &c.

And the Heir of one Coparcener may sue this Writ of Right *de rationabili parte* of the Seisin of the common Ancestor, which was of the Seisin of his Ancestor in the Time of King R. 1. or H. 3. or of the Seisin in the Time of King John, or other Kings after that Time, if he can prove it. As a Man shall have a Writ of Right Patent of the (b) Seisin of his Ancestors in such Times, &c. But if one Coparcener claim the Land by a Feoffment made unto her by her Ancestor in Fee; now if the other Coparcener deforce her of the Lands, she may have a Writ of Right Patent against her Sister for the Land, and shall join the Mife by Grand

(a) Vid. accordant 12 E. 3. Judgment 162. 7 Aff. 10. 7 E. 3. 49. &c. cited in the Margin of Co. Lit. 167. b. That if two Coparceners be, and one Disseise the other, and the Disseisee recovers in Assise, &c. she shall have Judgment to hold her Moieties in Severalty; so if one Coparcener recover against the other in a *Nuper obiit*, or

*Rationabili parte.* The Judgment shall be, that the Demandant shall recover and hold in Severalty. 3 E. 3. 48. 4 H. 7. 10. 30 E. 1. *Nuper obiit*. 18. 21 R. 2. *Nuper obiit* 22.

(b) And in that Case if the Demandant be within Age, the Parol shall demur; contra, if there be no Meise Descent of the Right. 7 H. 4. 20.

\* V. sup. A. accord.

Judgment.

[ 10. ]

Com. 306.  
no Battail lieth betwixt them.



Grand Assize, or by Battail, because she doth not there claim the Land as Heir to her Ancestor, as it seemeth: *Tamen Quere.*

- B And if a Man hath Issue two Daughters, and dieth seized of Lands in Tail, and one Daughter entreth into the Whole, and deforceth her Sister; there the Sister may have a *Formedon* against the other Sister, and not a *Nuper obiit*, nor this Writ of Right *de rationabili parte*; for this Writ lieth properly for the Lands in Fee-simple.

Writ of Ne injuste vexes.

Vide Mag.  
Char. cap.  
10.

- C WRIT of *Ne injuste vexes* lieth in Case where Lord and Tenant are, and the Tenant hath holden of the Lord and his Ancestors by Fealty, and 20s. Rent yearly, and of late Time the Lord hath gotten (a) Seisin of greater and more Rent of the Tenant, by Payment of the Tenant of his own Agreement without Coercion of Distress: Now if the Lord will distrain the Tenant for this Surplusage of Rent, the Tenant cannot avoid the Lord in an Avowry, for the Seisin which the Lord hath had by the Payment of the Tenant of this Rent of his own Agreement. But the Tenant may sue this Writ of *Ne injuste vexes* directed unto the Lord; which Writ is in it self a Prohibition unto the Lord, that he do not distrain his Tenant to do other Services than of Right he ought to do. And this Writ in its Nature is a Writ of Right, and shall be Patent; and this Clause, *Et nisi feceris, Vicecomes, &c.* shall be put into the Writ. And the Process in this Writ is, *Prohibition, Attachment, and Distress* against the Lord, commanding him that he shall not distrain, &c. And this Writ is founded upon the Statute of *Magna Charta*, cap. 10. which willeth, *Quod null' distring' ad faciend' majus Servic' de Feodo Militis, nec de alio libero Tenemento, quam inde debetur.* And the Form of the Writ is such:

C. 4. Part II.  
*Bevil's Case.*  
*infra G.*

- F (b) Rex A. salutem. Præcipimus tibi, *Ne injuste vexes, vel vexari permittas B. de libero Tenemento suo, quod de te tenet in I. nec inde ab eo exigas, vel exigi permittas Consuetud' vel Servitia quæ inde facere non debet, nec solet: Et nisi feceris, Vic' Lincoln' idem fieri faciet, ne amplius inde clamorem audiamus pro defectu recti.*

And this Writ is always Ancestrel, *viz.* where the Tenant and his Ancestors have holden of the Lord and his Ancestors by Fealty and 20s. Rent, or other Rent and Service; and of later Time the Lord hath encroached divers other Services or Rents, by Payment of the Tenant, or doing

(a) But if the Lord recover more on an Action tried, the Tenant shall not have a *Ne injuste vexes*, per *Knivett, Quere*, 39 E. 3. 18. and see accordant 38 E. 3. F. Droit 32. And by *Green*, the Tenant shall have a *Ne injuste vexes*, although the Lord recovers the Rent by Assize, which he had released;

but the Deed thereof not produced in Evidence; or where the Assize was taken on the Seisin and Disseisin. 7 H. 5. 7<sup>a</sup>.

(b) This Writ lies not against the Lord where a Recovery in an Action is had by him. 38 E. 3. F. Droit 32.

But other-  
wise in Assise  
of Rent, or in  
a Writ of Re-  
scous or Cef-  
savit; for the  
Tenure is tra-  
verfable in  
these Writs.

12 E. 4. 7.

22 Aff. 68.

Thorpe.

V. 26 H. 8. 6.

7 E. 4. 28.

16 E. 4. 11.

20 E. 4. 17.

10 H. 7. 11.

26 H. 8. 6.

Com. 45. &c

94.

The Count.

The Defen-  
dant Aſſor.

[II.]

doing of other Services which he ought not to do unto the Lord; then the Tenant may sue this Writ: For by Encroachment of Rent by the Lord by Payment of the Tenant, the Tenant shall not avoid the same in an *Avowry* by the Lord for that Rent which is so encroached. But H if the Lord do encroach other Services which the Tenant of Right ought not to do unto him, as Homage or Escuage; then the Tenant may avoid this Encroachment in *Avowry* by the Lord for these Services, because the Tenant may traverse the Manner of the Tenure in that Case; as to say, that he holdeth of the Lord by Fealty and 20 s. Rent only, without that he holdeth by Homage, Fealty, and Rent, in Manner and Form as the *Avowry* is made: Or the Tenant may sue this Writ of *Ne injuste vexes* in that Case if he will. And if the Lord do distrain to do other Services after the Prohibition delivered unto him, or to pay more Rent than of Right he ought to pay, then the Tenant shall have an Attachment against the Lord returnable in the Common Pleas, or in the King's Bench. And when the Lord cometh upon the Attachment, then the Tenant shall count against him in this Manner.

*B.* sheweth unto you, That whereas he holdeth of the aforesaid *A.* *Esc.* as of his Manor of *C.* twenty Acres of Land, with the Appurtenances in *W.* by Homage, Fealty, and by the Service of the twentieth Part of a Knight's Fee, and by the Services to render to the said *A.* Half a Pound of Pepper yearly at the Feast of *All-Saints*, for all Manner of Services; yet the aforesaid *A.* over the Services aforesaid, vexeth the said *B.* and suffereth him to be vexed, and of him demandeth and distraineth, and suffereth him to be distrained for 9 s. *per Ann.* of Rent, for which he is damnified unto his Damage of 20 l. And so note, that he shall declare of Damages in this Writ; and then upon this Count, the Lord who is Defendant shall make his Defence, and shall defend the Wrong and Force, *Esc.* and shall count against the Plaintiff, and shall say that he doth not tortiously demand the said Rent of 9 s. over the other Services, *Esc.* for he shall say, that the said *B.* holdeth the said twenty Acres of Land, *Esc.* of him by the said Rent and Services, *Esc.* and that he the said *A.* was seised as well of the said Rents of 9 s. as of all the other Services aforesaid, by the Hands of the aforesaid *B.* as by the Hand of his very Tenant for the said twenty Acres of Lands with the Appurtenances, as of Fee and of Right in Time of Peace, *viz.* in the Time of King *Edward*, late King of *England*, *Esc.* in taking of the Esplees, *viz.* Rents, *Esc.* And that such is his Right, he is ready to make good by his Body, *Esc.*

And thereupon he who is Plaintiff in the *Ne injuste vexes* shall defend A this Count, and thereof shall put himself upon the Grand Assise, and so the Mife shall be joined betwixt them in this Writ, which is at first but a Prohibition, *Esc.* And Judgment final shall be given upon this Writ after B the Mife joined, if it pass against any of the Parties; or if any of them be Nonfuit, or make Default after the Mife joined. And see the Form of the Count, and of the Defence in this Writ in the Book of *Entries of Pleas*, f. 90. on the first Page.

And



- C** And it appeareth *M. 18. E. 2.* that the (a) Feoffee shall not avoid Seisin of Rent had by Encroachment of his Feoffor, nor shall he have a Writ of *Ne injuste vexes*; nor a Man shall not have a Writ of *Ne injuste vexes* against the Grantee of the Seignior, as appeareth, *p. 10. E. 3.* 14 H. 4. 5. ac. by Thirning, and after 163. See 12 H. 4. cont. per Hankf.
- D** And *Trin. 20 E. 3.* it appeareth that Tenant in Tail shall not have *Ne injuste vexes*, &c. but he shall plead \*, and shew the Matter, and shall not be estopped by the Payment and Seisin had by the Hands of his Ancestors; but by a Seisin had by his own Hands he shall be bound during his Time in Avowry, as it seemeth. But after the Mife joined in a
- E** Writ of *Ne injuste vexes* sued, if the Parties imparle until another Term and Day, and after at this Term at the Day the Lord, who is the Defendant in the *Ne injuste vexes*, make Default, now what Process shall be awarded thereupon, or if Judgment shall be given upon this Default without any Process, *Quære.* And so if the Plaintiff at another Term after the Mife joined, and Day given, &c. make Default, it seemeth he shall be Nonsuit, &c. See *fol. 5. D.* \* See 20 E. 3. *E. Avowry* 1314

Writ de Recto clauso.

See 4 Inst. 269, 270.

**F** **W**RIT of *Droit Close* is a Writ which is directed unto the Lord of ancient Demesne, which lieth for those Tenants within ancient Demesne, who held their Lands and Tenements, by Charter in Fee-simple, or in Fee-tail, or for Life, or in Dower; if any of them be ousted of his Lands or Tenements, or disseised, &c. he, or his Heir, may sue this Writ of *Droit Close* directed unto the Lord of ancient Demesne, commanding him to do Right, &c. in his Court; and the Form of the Writ is such:

**G** *Henricus Dei Gratia, &c. (b) Ballivis suis de I. salut'. Præcipimus vobis, quod sine dilatione, & secundum Consuetud' Manerii nostri de I. plenum rectum teneatis A. de uno Messuagio cum pertin' in I. quod B. ei deforc', ne amplius inde clamorem audiamus pro defectu recti. Teste, &c. And another Writ thus:*

*Rex Ballivis suis Castri de Bamburg' salut'. Præcipimus, &c. quod, &c. secundum Consuetud' Manerii Castri de Bamburg, plenum rectum teneatis de duabus partibus piscariæ aquæ de I. in Bamburg, quas B. ei deforc', &c.*

**H** And the Order of putting the Parcels of Houses, Lands, Meadows and Pasture, &c. shall be observed and used as shall be done in a Writ of

**I** Right Patent. And this Writ may be sued of Common of Pasture, and for stopping of a Way, and such like. And the Writ for the Common is such:

Rex,

(a) See accordant 33 E. 3. *F. Avowry* 255. or rather 225. And therefore on Special Matter shewn he may traverse, That he takes by the Feoffment, and the Tenant by whose Hands the Seisin was, shall not avoid this on the Avowry. 18 E. 2. *F. Avowry* 217.

(b) Note; Tho' the Writ is directed to the Bailiffs, yet the Suitors are the Judges.

*Mich. 17, 18. Eliz. Rot. 1381. See Benl. N. 254.*

Note also; Altho' the Precept be *quod venire faciat* 12 &c. yet on the Protestation to sue in Form (or Nature) of an Assise, the Return of 12 is good, and so it seems of 24. *Hill. 19 Eliz. 3. Hayter's Case, & 44. Aubraham's Case.*

Rex, &c. *Præcipimus tibi, quod plenum rectum teneas, &c. de Comm' Pa-* K  
*sturæ in T. quæ pertinet ad unum Messuag', & x. acr' terræ, quæ secund' Con-*  
*suetud' Manerii, præd' tenet in eadem Villa, quas B. C. & D. ei deforc'.*  
 And for Stopping of a Way the Writ is such :

Rex Ball' Episcopi Covent' & Litch' de Maner' de C. salutem. *Quæstus* L  
*est nobis R. quod W. injuste & sine judicio obstruxit quandam Viam in D. quæ*  
*est infra præcinctum ejusdem Maner' ad nocumentum unius Messuagii, quod idem*  
*R. secund' Consuetud' Maner' prædict' tenet in eadem Vill' : Et ideo vobis*  
*Præcipimus, quod vocatis coram vobis partibus prædict' auditisq; hinc inde*  
*rationibus, eidem R. in præmiss' debitum & festinum justitiæ complementum*  
 (a) *fieri faciatis prout secundum Consuetudinem Manerii prædict' fuerit fa-*  
*ciend', &c.*

And note, that the Demesne Lands of a Manor, and the Manor itself, M  
 which is called ancient Demesne, is pleadable at the Common Law ; as  
 a Man ought to sue his Action for the Manor, and for the Lands, which  
 are Parcel of the Manor, at the Common Law, and in the Common  
 Pleas. But if a Man will sue for the Lands which are holden of the Ma-  
 nor, which are in the Hands of a (b) free Tenant who holdeth of the  
 Manor, for these Lands he ought to sue this Writ of *Droit close*, direct-  
 ed unto the Lord of the Manor, and there he shall make his Protestation  
 to sue in that Court the same Writ, in the Nature of what Writ he  
 will declare. And the Form of Entry when such Writ is brought in  
 Court is such :

*Ad hanc Cur' venit R. N. per Nich. B. Attornatum suum, per Literas Pa-* N  
*tentes ipsius R. & liberavit præfatis Ballivis quoddam Breve Domini Regis*  
*nunc clausum, eisdem Ballivis directum, in forma juris secundum Consuetud'*  
*Manerii præd', exequend' cujus tenor sequitur in hæc verba :*

[12.] Henricus, &c. Ballivis J. de S. salutem. *Præcipimus vobis quod*  
*juste & sine dilatione, & secundum Consuetudinem Manerii de G. de S. ple-*  
*num rectum teneatis Robert. N. de duobus messuagiis, &c. in W. & H.*  
*quæ P. & C. ei deforceant, ne amplius inde clamorem audiamus pro defectu*  
*recti, &c. Et super hoc præd', Robertus N. invenit Pleg. de prosequendo*  
*Breve suum præd', scil' T. & W. & protestatur prosequi illud Breve in*  
*eadem Cur' in forma & natur' Brevis Assise novæ Disseisnæ ad Communem*  
*Legem, secundum Consuetud. Manerii præd', dicens quod præd'. P. & C.*  
*injuste & sine judicio disseisiverunt eum de libero Tenem. suo in W. & H.*  
*viz. de Tenementis præd' cum pertin' post primam, &c. Et pet' inde pro-*  
*cessum fieri secundum Consuetud' ejusd' Man' præd', &c. Ideo secundum*  
*Consuetud' ejusd' Man' præcept' est T. H. subballivo Man' illius, & mi-*  
*nistr' hujus Cur', quod facer' Tenementa illa reseisir' de catallis quæ in ipso*  
*capta fuer', & ead' Tenementa cum pertin' esse in pace usque ad proxim' Cur',*  
*coram præfatis Ballivis & sectatoribus ejusdem Cur', viz. die Foris proxim'*  
*futur' hic sc. apud S. tenend' ; & interim faciat xii liberos & legales ho-*  
*mines*

(a) But Note ; Some Actions which are  
 sueable there (i. e. in the Manor-Court)  
 only, are sueable by Way of Plaint, as  
 Replevin, Account against a Guardian in  
 Socage ; and so it seems of a Writ of  
 Mesne. See 21 E. 3. 10.

(b) And Note ; Lands that are Frankfee  
 may be held of a Manor that is ancient  
 Demesne. See 11 H. 4. 86. Per Cur'. yet if  
 Frankfee be recovered in a Court of an-  
 cient Demesne, 'tis a Disseisin. 30 E. 3. Ass.  
 5. 4 H. 6. 79.



*mines de visu. de W. & H. præd. infra præcinctum Manerii prædicti videre Tenementa præd., & nomina eorum imbrevari facere. Et quod summ. eos per bonos Summ', quod tunc sint hic, scil. apud S. parati inde facere Recognitionem: Et quod ponat per vadios & salvos plegios prædict. P. T. Ballivum suum, si ipse inventus non fuerit, quod tunc sit hic apud S. ad audiendum illam recognitionem, &c. Et quod tunc habeat ibidem nomina Pleg. Summ', & dictum præceptum sibi inde direct'. Et idem dies datus est præf. R. N. hic, &c.*

See all this Form to make Protestation in the Book of Entries of Pleas, *Fol. 115.* And then at the Day of the Precept and Process returned, the Defendant ought to appear and plead in Bar, or unto the Writ, or other Matter, in such Form as shall be in an Assize at the Common Law. And if the Protestation be made in the Nature of another Writ, then the Precept shall be according unto the Nature of the Process which is given in such Writ; and the Tenant when he cometh in shall plead as he shall do in such Writ sued against him at the Common Law, for the Nature of the Protestation doth alter and change the Manner of Pleading for the Tenant.

A And if false Judgment be given in this Writ, the Party Tenant or Demandant may sue a Writ of false Judgment thereupon. Post. 18.

B But he who holdeth Land in Ancient Demesne by Copy of Court-Roll, at the Will of the Lord, who is called Tenant by base Tenure, if he be ousted of his Lands or Tenements there in ancient Demesne, he shall not have this Writ of *Droit Close*, but he ought to (a) sue by Bill in the Court of the Lord of the Manor, and shall make Protestation to sue there in the Nature of what Writ he will. But if false Judgment be given against him in that Court, he shall not have a Writ of false Judgment thereupon at the Common Law, nor other Remedy; but to sue unto the Lord by way of Petition, as it appeareth in *14 H. 4. 34.* Lit. 6. ac.  
14 H. 4. 34.  
7 E. 4. 19.

4. For those who hold their Lands in base Tenure in ancient Demesne, or by the Rod, hold them in Villenage, and they shall not have such Writ of *Droit Close*, nor a Writ of (b) false Judgment, &c. See the Stat. of *1 R. 2. cap. 6.* of that Matter.

C And this Term, which is now at this Day called Copy-tenants, or Copy-holders, or Tenants by Copy, is but a new found Term, for of ancient Times they were called Tenants in Villenage, or of base Tenure; and that appeareth by the ancient Tenures, that those who held by the Rod, or in base Tenure, or by Copy of Court-Roll, were then called and named Tenants that held in the Villenage: For Tenants by Copy of Court-Roll are not specified, nor named by such Name; Note, Copy-hold Tenants.

E

but

(a) See *14 H. 4. 34. 1 H. 5. 12. Nat. Brev. 16.*

(b) And Note, *14 H. 4. 34.* 'twas adjudged, That if one Recover against Tenant by the Verge in ancient Demesne by Writ of Right close, the Tenant shall not have a Writ of false Judgment, nor Af-

sign this for Error, for then he should be restored to a Freehold which he never lost, but always continued in the Lord. But it seems the Recovery is void, and may be avoided by Plea. *1 H. 5. 12.* And so it is, tho' they are Lands at Common Law. *18 H. 6. 28.*

but yet at that Time there were such Tenants, but then they were called Tenants in Villenage, or of base Tenure.

And when the Writ of *Droit Cloſe* cometh unto the Lord, or unto D his Bailiffs, the Lord ought for to hold his Court, and to proceed thereupon according to Law, &c. And if the Lord will not hold his Court, then the Demandant may sue a Writ out of the Chancery directed unto the Lord, commanding him to hold his Court, &c. And if he will not hold it, then the Demandant may sue an Attachment against the Lord directed unto the Sheriff, returnable in the Common Pleas, or King's Bench, and thereupon the Demandant shall recover his Damages.

And if the Writ of *Droit Cloſe* be directed unto the Bailiffs, &c. and they will not hold the Court, then he may sue such a Writ unto the Bailiffs, commanding them to hold their Court; and if they will not so do, he may sue an Attachment against them directed unto the Sheriff, returnable as aforesaid, &c.

(a) And if the Lord himself oust his Tenant of Lands which are holden of the Manor by Charter in Fee, the Tenant who is ousted shall have this Writ of *Droit Cloſe* directed unto the Lord himself, if he will, &c. Or in this Case he may have an Affize, or other Writ at the Common Law against the Lord of those Lands. But it appeareth by a Rule in the Register, that if the Demandant be defeated of Justice in the Lord's Court, that then the Demandant may sue a Writ directed unto the Sheriff, commanding the Sheriff that he go unto the Court in ancient Demefn, and that he take with him four discreet Knights in their proper Persons, to see that Right be done unto the Party demandant in this Writ; and if the Sheriff refuse so to do, he may have an *Alias* and *Pluries*, and Attachment against the Sheriff in the Common Pleas or King's Bench. But it seemeth that this Writ which shall be so sued directed unto the Sheriff, that he see Right done to the Demandant, is of little Effect; for by Virtue of this Writ he cannot compel the Lord to do Right unto the Demandant, as it seemeth; *tamen Quære*: For if he cannot cause the Lord to do Right unto the Demandant in a Writ of *Droit Cloſe*, then it shall be in vain to sue such Writ directed unto the Sheriff, to go unto the Lord's Court, and to see that Right be there done. And the Demandant may sue such Writ directed unto the Bailiffs, or unto the Lord himself, commanding them that they do him Right, &c. and that they do not delay the Matter, &c. And thereupon an *Alias*, a *Pluries*, and *Attachment* if need be.

[ 13.]

And

(a) See 21 E. 3. 26. Affize brought by the Tenant against the Lord and another, and the other takes on him the Tenancy, and the Lord would have Pleaded ancient Demefn, and because he was named only as a Disseisor he could not. See 41 E. 3. 22. a Precipe brought by a Tenant against the Lord in ancient Demefn,

and two others, and the Lord disclaims &c. And See there, there is the same Election of the Tenant, where he brings his Action, or the Lord disleises him.

*Quære*, If the Tennant recovers against the Lord at Common Law, if ever the Lands can be ancient Demefn again.



**A** And if a Plea be removed in the County, the Demandant may sue such Writ directed unto the Sheriff, that he proceed in the Plea, unto Judgment, and to do Right; and upon that he shall have an *Alias*, a *Pluries*, and *Attachment* against the Sheriff, if he will not do accordingly.

**B** And note, That the Demandant in a Writ of *Droit Close* cannot (a) remove the Plea out of the Lord's Court for no Cause, &c. nor the Tenant remove the Plea out of the ancient Demesne, if not for Causes which prove the Land to be Frank-fee, and not ancient Demesne; and the Form of the Writ of *Recordare* to remove the Plea out of ancient Demesne is such:

**C** (b) *Rex Vic'. Lincoln. salut'. Præcipimus tibi, quod assumptis tecum quatuor discretis & legalibus Militibus de Com. tuo, in propria persona tua accedas ad Cur'. B. de C. & in plena Curia illa recordar. facias Loquelam quæ est in eadem Cur' per parvum Breve nostrum de Recto, inter, &c. de uno mesuagio cum pertin' in I. & Record' illud habeas coram Justic' nostris, &c. & partibus, &c. & habeas ibi nomina prædict' quatuor hominum, & hoc Breve, & aliud Breve, &c. Quia præd' A. in placitand' in Cur' præd' protulit Chartam Domini Hen', quondam Regis Angliæ, progenitoris proavi nostri, per quam idem proavus noster seoffavit W. patrem præd' A. (cujus*  
E 2
Hæres

(a) See Accordant, *Per Cur'* 34 H. 6. 35. *Sed contra.* 2 E. 3. 29. But *ibid.* 35 seems to agree. See also 3 H. 4. 14. Where he is but Bailiff, he may maintain the Plea, or if he be Party the Parol shall be remanded; yet if the Bailiff be Cousin and Heir to the Plaintiff, 'tis good Cause of Removal; yet See 6 H. 4. 1. That he was Bailiff of the Robes to the Plaintiff was held no Cause of Removal, *per Cur'*; and therefore remanded; and if the Court does not do Right, he is put to his Writ of false Judgment. 12 H. 4. 17. 13 H. 4. 14. Nor is it Cause of Removal; that the Process there was misawarded. 9. H. 6. 25. Nor when the Bailiff is Demandant. 11 H. 6. 10. *Per Cur'*.

(b) Note; On a *Recordare* from a Court of ancient Demesne, if the Record be made up and removed, but the Cause of Removal appears to the Court to be Insufficient, the Tenant shall not be Effoined, 34 H. 6. 35. *per Cur'*; but if the Cause be Sufficient, the Tenant may be Effoined. 14 E. 3. Effoin 10. 19 E. 3. Effoin 23. 33 E. 3. Effoin 183. But some held the Contrary. For if the Cause be true, the Writ shall abate, if not true, it shall be remanded. 8 E. 3. 7. And 'twas said, if the Tenant be Effoined on his Writ of false Judgment, [*Recordare*] and the Demandant admits it, the whole Matter in the Lord's Court is discontinued. 2 E. 3. 35. Yet See in the same Folio an Effoin allowed for him who

brought the *Recordare*, and a Feme Plaintiff was received in a *Recordare*.

If the Tenant who brings a *Recordare* makes Default, the Plea shall be remanded, and therefore in a Writ of Right against divers by several Summons, if they join in a *Recordare*, and the Record is removed, and one of them is Nonsuited, it extends to all. 2 E. 3. 29. 10 E. 3. 59. But this is doubted. 18 H. 6. 28. *vide Kel.* 115.

If the Record be not fully sent, altho' at the Day prefixed, the Tenant makes Default, or the Demandant, this makes no Matter as it seems. But if the Record be fully sent, if at the Day the Tenant makes Default, the Record shall be remanded, and if the Demandant makes Default, the Writ of Right shall abate. See 17 E. 3. 44. 27 E. 3. 77. 18 E. 3. 3.

If at the Day no Record be made, nor the Original sent, altho' the Demandant makes Default, he shall not be Nonsuited, but a grand Distress shall go against the Bailiff, to deliver the Writ, and against the Suitors, to make the Record, but the Non-appearance of the Demandant shall be regarded. 27 E. 3. 77. If the Record be made, but the Original is not sent (or returned) if the Demandant makes Default, it shall be adjudged a Nonsuit, if an Original be necessary. 8 E. 3. 7. 10 E. 3. 59. *quod Nota.* 17 E. 3. 44. 13 E. 3. 9. *quod Vide.* 18 E. 3. 3.

*Heres ipse est) de mesuagio præd', ut dicitur, per quod idem A. dicit se non debere nec posse sine nobis respondere: Fiat executio istius Brevis, si causa sit vera, & præd' A. hoc petat, & aliter non.* There is another Cause in the Register thus: *Quia clamat tenere Tenementa prædicta ad Communem Legem, &c.* But then in the Common Pleas, when

A Writ of Right Close is brought, and pendent the Writ the Tenant accepts a Fine, *Sur conusance de droit come ceo que il ad, &c.* yet the Land remains ancient Demesne as to that Action, because he hath affirmed his Plaint before the Fine; and so was it holden, 12 H. 7. Rot. 103.

Frank-fee; and if he claim the Land by the Feoffment and the King's Charter, or by the Feoffment of Charter of the Lord of the Manor; or if he claim to hold them of the King, as of another Manor of the Honour, &c. and not to hold them of the same Manor; or if he say, that in an Assize brought before of the same

11 E. 3. Cause *de remover*, Plea 16. If the Cause assigned may be tried in ancient Demesne, it shall not be removed.

Register 11. Assize that they were Frank-fee, &c. And another Cause appeareth in the Register, because that there are not any Suitors in the Lord's Court of ancient Demesne to do Right, &c. But *Quære* if this be a sufficient Cause or not. See 4 *Just.* 270.

Because there were but six Suitors, and one Plaint. and the other Def. therefore removed: So four not sufficient.

If

(a) If a Fine on Render be levied of ancient Demesne, it seems that the Nature of the Land is changed without any Execution. 40 E. 3. 40. per *Thorpe*. and *Tbirn*. So if a Judgment rendered, &c. Vide. 2 E. 4. 28. But 18 E. 2. Ancient Demesne 37. If a Fine be levied, *Sur conusance de Droit*, and Release, hereby there is no Transmutation of the Possession, nor is the Tenancy altered, as to the Lord, &c. (or any Stranger to the Fine.) 40 E. 3. 4. per *Candish*, but *Belku. contra.* 18 E. 2. Ancient Demesne 37. But as to the Parties themselves, the Tenancy is changed by way of Estoppel per *Wilby*; and so 'twas adjudged. For if such Conusor brings an Assize against the Conusee, or *converso*, no Exception of ancient Demesne lies. 21 E. 3. 25. And therefore if the Lord be a Party, by such' Fine the Tenancy is changed, and also he shall never have a Writ of Disceit. 30 E. 3. 13, 6. or 17. per

*Green.* Vide 29 E. 3. 36. at the *Distingas Secutores*, the Record was received by Attorney made by the Suitors by Writ out of Chancery.

And Note; altho' the Fine be levied by a Disseisor, yet the Disseisee as it seems, ought to sue at Common Law, but when he has recovered the Tenements, they shall be ancient Demesne again, 3 E. 3. 33. and therefore if in such case Judgment be given in the Court of ancient Demesne, and the Recoveror enters, in Trespass brought against him for this Entry, he cannot justify by Force of the Recovery there, for it was *coram non Judice.* 7 H. 4. 3. accordant, where these Particulars are also agreed, *viz.*

\* 1st. If A. recovers against B. in a Writ of Right, in Nature of an Assize in ancient Demesne, where in Truth there is a Fine levied of the same Tenements, and the Cattle of B. are thereupon taken in

\* Vide Post.  
20. A.



- D** If a Frank-Tenant of ancient Demesne, who holdeth his Tenements by Knights Service and in Fee, be ousted and disseised of his Lands or Tenements, he shall sue at the Common Law, and not in ancient Demesne, for no Lands are ancient Demesne, but Lands holden in Socage. Post. 14.  
26 H. 8. 4.  
for Lands in  
Gavelkind,  
see 14. b.
- E** And a Man shall have a Bill of *fresh Force* within forty Days in the Lord's Court of ancient Demesne, for the Lands after the Disseisin, and without suing any Writ thereupon; as a Man shall have Lands in a City or Borough: And there in that Case, if the Tenant hath any Matter to prove the Lands to be Frank-fee, he shall have a *Recordare* to remove the Plea out of ancient Demesne into the Common Pleas, &c. 26 H. 8. 1. 4.  
8 H. 7. 11.  
3 H. 6. 34.  
34 H. 6. 35.  
or 44 E. 3.  
10.
- F** And although the Plea in ancient Demesne be there without Writ, &c. if the Tenant remove the Plea out of ancient Demesne by a (a) *Recordare*, and for Cause shewed in the Writ, if the Cause be not good, the Tenant in the Common Pleas shall not shew any new Cause to retain the Plea in the Common Pleas: But if the Cause in the Writ be, *which he claims to hold at the Common Law*, then in the Common Pleas he may shew what Cause he will to retain the Plea there; which Cause shall prove the Tenements to be Frank-fee. 4 Inst. 270.  
contra.  
21 E. 3. 32.  
Br. auncient  
demesne 18  
or 34. H. 6.  
35.  
1 H. 7. 30.  
50 E. 3. 24.  
the Lord  
made a  
Lease for  
life, that is a  
good Cause.  
1 H. 7. 30.  
per Toun-  
send.
- G** And in ancient Demesne, if the Demandant and Tenant put themselves upon the (b) Grand Assize, or the Tenant vouch a Foreigner, or plead a Foreign Plea, which cannot be tried in the Lordship there; then a *Supersedeas* shall be granted out of the Chancery, directed unto the Lord of ancient Demesne, or his Bailiffs, if the Writ were directable to the Bailiffs, that they should surcease, &c. And the Party Defendant

in Execution, he shall recover in a Replevin, because it was *coram non Judice*; nay altho' the Manor was in the King's hands at the Time of the Fine levied.

But 2dly. 'Tis there admitted, that if Part of the Tenements so recovered be ancient Demesne, of which no Fine was levied, in such case the Bailiff may Justify the Taking of the Defendant's Cattle in Execution in any Place within the Manor, altho' that such Place was not ancient Demesne. 7 H. 4. 28. 29. Yet See. 8 E. 4. 6. If one Recovers, in a Court of ancient Demesne, Lands, whereof Part are ancient Demesne, and of the Residue, a Recovery had been before had in the King's Court. If the Party brings Debt for the Damages recovered, he shall be barred of the whole, because the Damages are to be given in-tire.

(a) Note; If the Cause in the *Recordare* be Special, as *eo quod clamat tenere ex Feofamento I. S. Domini Manerii*, &c. there he cannot shew another Cause. But if the Cause be general, *viz. Eo quod clamat tenere ad Communem Legem*, there may shew

the Cause Specially. 9 H. 6. 34. 35.

Yet see where the Tenant removed the Plea, for that he claimed by Prescription to hold at Common Law, and yet in *C. B.* he was received to waive this Cause, and to shew a Confirmation by the Lord. 21 E. 3. 32.

(b) The Plea shall be removed to be Tried, and afterward remanded to be adjudged, 14 H. 4. 26. See 19 H. 6. 53. on a Foreign Voucher, Day was given to the Party himself in *C. B.* to determine his Warranty, and there a Summons *ad Warrantizand* issued, and the Vouchee came and Vouched over *B.* who entred into Warranty, and Vouched over, 5 E. 6. *Dyer* 69. See the Tenant in a Writ of Right close sued in Nature of a Writ of Right at Common Law, and puts himself on the Grand Assize; and therefore the Plea was removed *per Recordare*; but it was afterwards remanded by the Court, for by the Custom they may elect a Jury instead of the Grand Assize. *Stafford's Case*, *Dyer* 111. See 1 H. 7. 29. *contra*.

Defendant shall sue his Writ of *Warranty* of *Charter* against the Vouchee, &c.

22 H. 7. Ret. 103. It is holden, that if they proceed after the Record removed, and award Execution, that it is not void. 16 E. 3. 3. Process 167. The Party had *Ad la querela* against the Judges upon that Case: And 17 E. 3. *ibid.* 186. it was holden that the Sheriff shall be punished for his Contempt.

And if the Sheriff do remove the Record in ancient Demesn by *Recordare* in the Common Pleas, and afterwards the Bailiffs in the Court of ancient Demesn proceed in the Plea (notwithstanding the Removing of the Record) then the Tenant may sue a *Certiorari*, directed unto the Justices of the Common Pleas to certify the Tenor of the Record into the Chancery, and of this Removalment; and upon the Certificate into the Chancery, the Tenant shall have an (a) *Attachment* against the Bailiffs, who

[14]

proceeded in the Plea, directed unto the Sheriff, for to arrest them, returnable in the Common Pleas, to answer unto the King, and also unto the Tenant who sued forth the *Recordare*. But in ancient Demesn, if the Tenant vouch a Foreigner to Warranty, then the Tenant ought to sue his Writ of *Warrantia Chartæ* returnable in the Common Pleas against the (b) Vouchee, and upon this Writ sued to purchase a *Superfedeas*, directed unto the Bailiffs of ancient Demesn, commanding them to surcease until the Plea in the *Warrantia Chartæ* be determined in the Common Pleas. And if the Bailiffs proceed after such Writ sued forth A and directed unto them, the Tenant who sued the Writ may have an *Attachment* of them directed unto the Sheriff, &c. that he do attach them to answer in the Common Pleas at a certain Day, &c. as well unto the King as unto the Party, for the Contempt, &c. But if the Plea of *Warrantia Chartæ* be discontinued in the Common Pleas, then the Demandant in the Writ of *Droit Close* may sue a Writ out of the Chancery directed unto the Justices of the Common Pleas, to certify the King in the Chancery if the Plea of *Warrantia Chartæ* be pendant or discontinued, or not, so that if it be discontinued, &c. or determined, he may send unto the Bailiffs of ancient Demesn, that they proceed in the Plea.

V. 13. D.  
29 R. 2. an-  
cient de-  
mesn 41.

Sokemans.

And if the Tenant claim to hold the Lands of the Lord in ancient Demesn by Knights Service, &c. the same is a good Cause for to remove the Plea, because that Lands which are holden of the Manor, which shall be taken ancient Demesn, shall not be holden of the Lord by other Services than Socage; for the Tenants in ancient Demesn are called *Sokemans*, that is to say in *Englisch*, Tenants of the Plough. B

And therefore if the Lord of a Manor in ancient Demesn, before the Statute of *Quia Emptores terrarum*, maketh a Feoffment in Fee of the Parcel of the Lands of the Manor, to hold of him by Knights Service, C

(a) Where the Plaintiff shall have a Special Action on the Case, and recover Damages, and yet the Proceedings be void, &c. See 14 E. 3. F. Action *sur le Case*. 39.

(b) *Vou. hee*. See 13 E. 1. *Voucher* 269.

and after the Warranty determined they shall give Day to vouch by Prefixion in the Court of ancient Demesn, and the same Law for a Court-Baron. See 35. E. 3. *Vou. hee* 3:6.



vice, such Tenant shall not have a *Monstraverunt*, if he be distrained for other Services than of Right he ought to do, because his Lands are not ancient Demesne of the King, and yet they are holden of the Manor which is ancient Demesne: But it is intended of such Tenures which shall do the Services of the Plough, viz. to plough and till the Lord's Lands, to mow the Lord's Meadows, or other such like Services as are for the maintaining of the King's Sustenance or Victuals, and his Subjects; and for such Services such Tenants have such Liberties and Privileges in the Law, that they may the more quietly use their Husbandry, and do their Services.

50 E. 3. 6.  
per Siden-  
ham, contr.  
if he refer  
but Socage  
Tenure.

Writ de Monstraverunt.

**T**HE Writ of *Monstraverunt* lieth for the Tenants of (a) ancient Demesne who hold by free Charter, and not for those Tenants that hold by Copy of Court-Roll, or by the Rod, according to the Custom of the Manor, at the Will of the Lord. And these Tenants ought to be Tenants which hold of a Manor which was in the Hands of S. Edward the King and Confessor, or in the Hands of King William the Conqueror; which Manors are called ancient Demesne of the King, or the ancient Demesne of the Crown of England. And to those Tenants (who hold of such Manors) there are many and divers Liberties, Gifts and Grants by the Law; as to be (b) quit of Toll, and Passage, and such Impositions which Men shall demand of them for the Goods or Chattels sold or bought by them in Fairs or Markets; and to be quit of Taxes and Tallages granted by Parliament; if not, that the King lay a Tax upon ancient Demesne, as he may for some great Cause, whensoever it seemeth good unto him. And also Tenant in ancient Demesne ought to be acquitted of the Payment of the Expences of the Knights which came to Parliaments, and also they (c) ought not to be impanelled or put upon Juries or Inquests in the Country out of their Manor or Seigniorie of ancient Demesne, if they have not other Lands at the Common Law for which they ought to be charged, &c. And if such Tenants, or any of them who hold of the Manor of ancient Demesne, be distrained to do unto their Lords other Services or Customs than they, or their Ancestors have used to do, then they may

49 E. 3. 22.

19 H. 6. 66. per Newton, Tenants in ancient Demesne shall be quit of Toll of Things which they sell which are arising of their Lands, and so of all Things which they buy, which are for the Manurance of the Land; but *Quare* if they shall be quit for all Things bought and sold.

Vide 161. they shall be quit of Suit to Leets and Hundreds. Vide 22 El. Dyer 377. Register 181. Br. ancient Demesne 44. 7 H. 6. 35. Martin. acc.

(a) And therefore a Tenant of a newly approved Wast, tho' it be aliened by the King, and to hold of the Manor by the Custom of the Manor is (not) ancient Demesne. 21 E. 3. 56. per Thorp. See Hoveden 460. Willielmus senior Anno 1086. Totum Angl. describi fecit. And See Ingulphus 870. and 908. pro divisione Comitatum. Vide bene.

49 E. 3. 22.

(b) Acquitted from Amerciaments of the County. Claus. 12 H. 3. m. 11. See 32 E. 3. Monstraverunt. 6. and Rot. parl. 6 E. 3. No. 3.

(c) i. e. If they have not other Lands in Frank-fee. 42. Ass. 8.

40 E. 3. 44.  
*Quere* if  
they shall  
have this  
Writ with-  
out being  
distrained.

may sue this Writ of *Monstraverunt* directed unto the Lord, commanding him that he do not distrain them to do other Services or Customs than they have used to do : Or they may have this Writ of *Monstraverunt* directed unto the Sheriff ; and that is where the Writ of *Monstraverunt* is first sent unto the Lord, and that he do not distrain his Tenants, &c. Or they, upon this Writ sued and directed unto the Lord, may have and sue another Writ directed unto the Sheriff, rehearsing, That where he hath sent his Writ unto the Lord of ancient Demesne, that he should not distrain his Tenants, &c. and if the Lord will not do it, and suffer the Tenants to be in Peace, that then the Sheriffs shall do it, and cause the Lord to suffer the Tenants to be in Peace, and that he do distrain them for other Services than of Right they ought to do. And the Form of the Writ directed unto the Lord is such : (a)

40 E. 3.  
these Words  
prove that  
they may  
have this  
Writ before  
Distress.

[ 15. ]

*Rex Abbati de C. salutem. Monstraverunt nobis homines tui de Manerio de I. quod est de antiquo Dominico Coronæ Angliæ, ut dicitur, quod tu exigis ab eis alias Consuetud' & alia Servitia, quam facere debent, & antecessores sui Tenentes de eodem Manerio facere consueverunt temporibus quibus Manerium illud fuit in manibus progenitorum nostrorum quond' Reg' Ang' vel in manu nostra. Et ideo tibi præcipimus, quod à præf' hominibus non exigas, seu exigi permittas, alias Consuet' & alia Servitia quam facere (b) debent, & Antecessores sui prædict' facere (b) consueverunt temporibus præd'. Et nisi ad mandatum nostrum hoc feceris, A. Vicecom' nostr' Linc', id fieri præcipimus. Teste, &c.* And upon this Writ they may sue another Writ of *Monstraverunt*, directed unto the Sheriff, which shall be in this Form : *Rex Vic' Lincoln', &c. Monstraverunt nobis homines Abbatis de Manerio de I. quod est de antiquo Dominico Coronæ Angl', ut dicitur, quod idem Abbas exigit ab eis alias Consuetud' & alia Servitia quam facere debent, &c. [usque ibi, in manu nostra :] per quod eidem Abbati præcipimus, quod à præf' hominibus non exigeret, vel exigi permetteret, alias Consuetud' vel alia Servitia quam facere debent, & Antecess' sui præd' facere consuever' tempor' prædict'. Et ideo tibi præcipimus, quod nisi idem Abbas ad mandatum nostrum hoc fecerit, tu id fieri fac', ne amplius inde clamorem audiamus pro defectu Justic', &c.*

And it seemeth that by this Writ directed unto the Sheriff, the Sheriff may charge the Lord, that he do not demand nor distrain them for other Services than they ought to do, and that the Sheriff may make Resistance and Rescous unto the Lord, if he distrain the Tenants

4

(a) See this Writ of *Monstraverunt*, founded on a Petition and Ordinance in Parliament. 18 E. 1. 27.

(b) *Quere*, If he shall not have a *Monstraverunt* where his Estate is confirmed, to hold by less Services. 49 E. 3. 7. See 21 E. 3. 33. *F. Cause de remover Plea* 18. Where it is adjudg'd, that it is not made Frank fee by the Confirmation. But *Wilby* held the Contrary. *Hill* said, no *Monstraverunt* can be, &c.

See 30 E. 18. Where 'tis argued, if the Lord in ancient Demesne, confirm the Estate of his Tenant to hold by 2 s. libere & quiete ab omnibus aliis consuetudinibus, and held by *Green* to be Frank-fee, and on a Distress for more Services, the Tenants shall be aided in Replevin. But by *Wilby* and others, it continues ancient Demesne, and he shall have a *Monstraverunt*, and Count upon his Case.



Tenants for other Services, &c. and that the Sheriff may take the Power of the County to resist the Lord in such Case, or the Sheriff may command the Neighbours, who dwell next to the Manor, that they resist and do Rescous unto the Lord, if he will distrain his Tenants, &c. And it seems they may justify the same by the Commandment of the Sheriff, C if he have such a Writ sent unto him, &c. And after the Writ directed unto the Sheriff, if the Lord distrain, the Tenants may sue an *Attachment* against him, returnable in the Common Pleas, or the King's Bench, to answer to them for this Contempt; and if it be found for them, they shall recover their Damages.

D And note, that the Writ of *Monstraverunt* shall be sued by many of the Tenants without naming any of them by their proper Names, but generally, *Monstraverunt nobis homines*, &c. But in the Attachment against the Lord by the Tenants, the Tenants ought to be named by their proper Names, thus: Com. 129.  
8 H. 6. 26.  
1 H. 5. 13.

(a) *Rex, &c. Si A. de B. C. de F. & homines Abb. M. de Manerio de I. quod est de antiquo Dominico Coronæ Angliæ, ut dicitur, fecerint, &c. tunc pone, &c. prædict' Abbat' quod sit coram nobis, &c. ubicunque, &c. ostensurus quare exigit a præfat' hominibus alias Consuetud' & alia Servitia quam facere debent, & Antecess. sui Tenentes de eodem Manerio, facere consuever' temporibus quibus Manerium illud fuit in Manibus progenitor' nostror' quond' Reg' Angliæ, vel in manu nostra, si casus sic fuerit, contra Prohibitionem vestram. Et habeatis ibi nomina Pleg', & hoc Breve. Teste, &c.*

E And there is another Writ of *Monstraverunt*; where the Tenants of any Hamlet, which Hamlet is Parcel of a Manor of ancient Demesne, are distrained by the Lord, they shall have such Writ:

*Rex, &c. Monstraver' nobis homines tui de Hamlet de I. quod est membrum Manerii de B. quod est de antiquo Dominico Coron' Ang' ut dicitur, &c.*

F And it seems that in the Writ of *Attachment* he ought or may name all those Tenants by their proper Names which are distrained after the Prohibition delivered unto the Lord; and it behoveth not to name other

G Tenants by their proper Names, but in the Generality, *Et homines*, &c. And if one of those, who is named by his proper Name, will not sue, &c. he shall be severed, &c. And he that is *Nonsuit* shall not grieve his Companions. And it seemeth that every one shall recover his Damages severally, (b) *because they are severally distrained*, and one may be more damnified than another, &c.

H And one Tenant may sue the Writ of *Attachment* in his own Name by his proper Name, and in the Name of the other Tenants, by general Words, &c. *Et homines*, &c.

F

And

(a) In a Writ of Admeasurement it is not necessary to name all the Tenants; for they shall be admeasured tho' not named, 8 H. 6. 26. And in an Action on the Statute of *Winton*, it is not necessary to name all the Inhabitants of the Hundred, but only some in certain. And so in a *Recordare* adjudged,

6 H. 8. and also 3 *Eliz.* But the Justices shall direct Judgment to be for the Plaintiff notwithstanding. See 6, 7 *Eliz. Dyer.*—

(b) *Note*; They may make joint or several Counts. 39 E. 3. 6. *per Belkn.* See *infra* [16.] A.

And if the Tenants do sue an *Attachment* against the Lord, because I he distrained them after the Writ of *Monstraverunt* delivered unto him, and pending the Writ of *Attachment* the Lord distrain them again by their Goods; then the Tenants shall have a special Writ of *Attachment* against the Lord, rehearsing the Matter; and in the same Writ the Sheriff shall be commanded to re-deliver unto the Tenants their Goods, if the Lord have taken them, &c. And this Writ shall be sued only in the Name of those Tenants which are again distrained pendent the Suit, and not in the Name of them all, as the other Writ is sued; and the Writ shall be such:

[16.]

*Rex Vic', &c. Si A. & B. homines Abb. de C. de Manerio de N. quod est de antiquo Dominico, &c. fec', &c. tunc pone, &c. præd' Abbatem, &c. ostensur' quare cum nuper ad Prosecution' dict' hominum nobis suggerent' præfat' Abbat' exegisse alias Consuetud' & alia Servitia quam facere debent, & antecess. sui Tenent' de eodem Maner', &c. (usque ibi, Reg' Angliæ) tibi præceperimus, quod poneres per Vad' & salvos Pleg. prædict' Abbatem, quod esset coram nobis à die Paschæ proxim' præterito in quindecim dies, ubicunque, &c. ad respondend' præfat' hominibus de præmiss. idem Abbas (pendent' coram nobis placito Attachiament' præd') prædict' homines eo gravius distrinxit, & omnia bona, catalla ac averia sua in eodem Manerio inventa eis abstulit, & ea eis adhuc detinet, quo minus ipsi placit' Attach' præd' pro paupertate prosequi possint, in nostri ac mandatorum nostrorum prædict' contemptum, & præd' hominum dispendium non modicum, & prosecutionis juris sui retardat', & status sui depressionem manifestam. Et averia, bona & catalla præd' eisdem hominibus per sufficientem securitatem interim deliberari facias. Et habeas ibi nomina Pleg' & hoc Breve. Teste, &c.*

V. supra [15.]  
G 39 E. 3. 6.  
48 E. 3. 44.  
39 E. 3. 6.  
ret. Monstr.  
2. 49. E. 3.  
per Belknap.

And in this Writ of *Monstraverunt*, the Plaintiffs in the Writ of At- A tachment may count severally, and then they shall recover several Damages. But they may count together in one Count, and declare how they were severally distrained, &c. and it is not necessary to alledge in the Count the Day or the Place where the Lord distrained them. And the Form of the Count or Declaration is such:

*A. B summ' fuit ad respondendum C. D. & F. & hominibus præd' A. de Manerio de S. quod est de antiquo Dominico Coronæ Angl', &c. de placito, Quare exigit ab eis alias Consuetud' & alia Servitia quam facere debent, & eor' antecessores, Tenentes de eodem Manerio, facere consueverunt temporibus quibus Manerium illud fuit in manibus progenitorum, &c. Regum Angl', ad grave damnum ipsorum C. D. & F. &c. Et unde iidem homines per T. S. Altern' suum queruntur, quod cum eorum antecess. Tenent' de eodem Manerio tempore quo Manerium illud fuit in manibus Domini Henrici quondam Regis Angl', proavi eidem avo Domini Regis nunc, tenuissent Tenement' sua per certa Servic', scil' quilibet eorum tenebat unam virgat' terr' de eodem Maner', &c. per fidelitatem & servic' quinque solid', & faciend' Scet. ad Cur' dicti Maner' de S. bis in anno, viz. ad Festum sancti Mich', & ad Festum Paschæ; & si contigisset Breve de Recto fuisse in eadem Cur' placitand', faciend' Scet. in eadem Cur' de tribus septimanis in tres septim', &c. quamdiu Breve illud pendens fuit in eadem Cur'; & quando Dominus Rex Burges suos & Dominica sua talliaverit, &c. pro omnibus Servitiis; & qui plus Terræ tenuissent de prædict'*



*prædict' Maner', plus redditus redderent, &c. Et eidem Tenentes hujusmodi statum continuassent a tempore ejusd' Hen. proavi, &c. de Rege in Regem progenitorum, &c. usque ad tempus præd' Domini Regis Edwardi avi, &c. Quod prædictus A. Dominus Manerii prædicti, distrinxit ipsos C. D. & F. & alios homines, &c. ad Sectam faciend' ad præfatam Curiam de tribus septim' in tres septimanas per totum annum, &c. & talliando ipsos alto & basso pro voluntate sua, exigend' ab eis pro filiis & filiabus suis maritand', & alia Servitia & Consuetud' Villain', quæ facere non debent, nec solebant, unde dic' quod deteriorati sunt & damnum habent ad valentiam C. l. & inde produc' Sectam, &c.*

**B** And whether they shall recover severally Damages upon the joint Count, it is a Doubt, yet it seemeth reasonable that they may, because it is several in its Nature, because they count upon the several Tenures, &c. and how that he hath distrained them severally; by which it seems but reasonable that the Jury do enquire of the Damages severally, if they pass for the Demandants, or that several Writs of Enquiry of Damages be awarded in that Case, if the Matter be adjudged with the Demandants. But it seems no Tenant shall recover Damages, but those who are specially named in the Writ of Attachment sued upon the *Monstraverunt*, and not to other Men.

**C** And note, that the Lord of ancient Demesne shall not be put to answer to the Writ of Attachment sued against him upon the *Monstraverunt*, before the Court be (a) certified by the Treasurer and Chamberlain of the Exchequer, whether the Manor be ancient Demesne. And therefore it behoveth the Plaintiffs in the *Monstraverunt* to sue forth a special Writ unto the Treasurer and Chamberlains of the Exchequer to certify the same: And the Writ is such:

*Rex Thesaur' & Camerariis suis salutem. Quia quibusdam certis de causis certiorari volumus, utrum Manerium de I. in Com' C. sit de antiquo Dominico Coronæ Angliæ necne, vobis mandamus, quod scrutato Libro nostro de Domesday, de eo quod inde inveneritis nos, sub sigillo nostro Scaccarii nostri, distincte & aperte sine dilatione redd' certiores, remittentes nobis hoc Breve. Teste, &c.* 49 E. 3. 22.

**D** And note, that the Book which is called *Domesday-Book* was made in the Time of S. Edward, and all the Lands which were in the Seisin, and in the Hands of the said S. Edward at the Time the said Book was made, are ancient Demesne, and the Lands which were in other Hands, and are not named in the said Book, are Frank-fee: And those Tenants which held in base Tenure, as by Copy of Court-Roll, or by the Rod, cannot sue nor maintain this Writ against the Lord: And the Death of one Tenant, nor his Non-suit, shall not (b) abate the Writ. And if the

F 2

Frank-

(a) It seems, that the Certificate lawfully coming into Court by *Certiorari* and *Mittimus* is authentical and conclusive, though there be no Issue joined, whether Frank-fee or ancient Demesne. 7 H. 6. 32. And see accordant 39 E. 3. 6. 'tis at the Peril of the Plaintiff.

(b) The Reason is, because as they are several Tenures, so the Torts and Damages are several, and so it is in Error, Attaint, and *Audita Querela*; contra in a *Ne injuste vexes*. 1 H. 5. 13. Although the Count in the *Monstraverunt* be joint. 19 E. 3. *Monstraverunt* 5.

49 E. 3. 22.  
39 E. 3. 6.  
19 E. 3. pl. 5.

2 R. 3. 1.  
39 E. 3. 6.  
44 E. 3. 44.  
41 E. 3. pl. 3.

19 E. 3. pl. 5. Frank-Tenants, and the Tenants by base Tenure join in a *Monstrave- F*  
 1 H. 5. 13. runt, the Writ shall not abate, but for the Tenants by base Tenure only.

## Writ de Warrantia Diei.

[17.]

**W**RIT of *Warrantia Diei* lieth in Case where a Man hath Day in **A**  
 any Action brought against him to appear in proper Person, and  
 the King at or before the Day send him in or about his Service, so as he  
 cannot appear in Court at the Day; then may he sue forth this Writ  
 directed to the Justices, reciting the whole Matter, commanding them  
 that they do not record his Default for that Day, for the Cause before  
 mentioned: And it is not material whether the cause be true or not, when  
 the King doth certify that the Party is in his Service. For it seemeth by the  
 Words of the Writ, that the King by his Prerogative may warrant this De-  
 fault for a Day. And so it seemeth, that if the Tenant in a *Præcipe quod*  
*reddat* at the *Grand Cape*, or the *Petit Cape* returned, make Default, that be-  
 fore Judgment upon this Default the King may send such a Writ unto the  
 Justices, rehearsing that the Party is in his Service, and commanding them  
 that his Default do not prejudice him: *And it standeth with Reason that the* **B**  
*King may so do, because that every one is bound to serve the King in his Business.*  
 But what Process shall the Court award if the Tenant will not appear at the  
 Day of the Default recorded, nor after, when the Writ of *Warrantia*  
*Diei* comes unto the Justices? It seemeth a new Summons shall issue out  
 of the Common Pleas, to summon the Tenant anew, because that his  
 Default at his Return is excused by the Writ of *Warrantia Diei*. But  
 if the Writ *Warrantia Diei* do not excuse the Default at the *Grand Cape*,  
 then it seems a new *Grand Cape* shall go forth upon the first Default re- **C**  
 turned at the Summons of the *Præcipe quod reddat*. *Quære* of that. And  
 the King may grant such Writs to save two Defaults at two several  
 Days, &c. *Quære* of these Matters, because they are out of Use at this  
 Day. But the Form of the Writ is such:

*Rex Justiciar' suis de Banco salutem. Sciatis quod A. fuit in servitio no-* **D**  
*stro per Præceptum nostrum die Lunæ in Crastin' xv. Pasch' proxim' præterit'*  
*ita quod eo die interesse non potuit Loquel' quæ est coram vobis per Breve no-*  
*strum inter B. petent', & præd' A. Tenentem, de uno Mesuagio cum pertinen'*  
*in N. unde idem A. C. versus prædict' B. inde vocavit ad Warr' ut dicit:*  
*Et ideo vobis mandamus, quod præd' A. propter absentiam suam ad illum*  
*diem, non ponatur in defectu, nec in aliquo sit perdens, quia diem illum quoad*  
*hoc warrantizabim. Teste, &c.*

The Form of the Writ to sue two Defaults is: *Rex, &c. ut supra.*  
*Sciatis quod A. fuit in servitio nostro per Præceptum nostrum die Jovis in Octa-*  
*bis S. Hill', & die Lunæ in Crastin' Animarum proxim' præteritis, ita quod*  
*diebus ill' interesse non potuit Loquel' quæ est coram nobis per Breve nostrum*  
*inter, &c. Et ideo vobis mandamus, quod præd' A. propter absentiam suam ad*  
*dies illos non ponatur in defectu, quia dies illos quoad hoc ei warrantizabi-*  
*mus. Teste, &c.*

And these two Writs are not granted but by the King himself by the **E**  
 Rule of the Register; and the King may grant such Writs unto the  
 Mayor



Mayor and Sheriffs of London, or unto the Bishop of Durham in the County Palatine, or unto the Justices of Assize or in the Eyre, or unto the Sheriff: And these Writs may be granted as well for the Demandant and Plaintiff as for the Tenant; and then the Writ is such:

F Rex, &c. *Sciatis quod A. fuit in servic' nostro die Lunæ in Craftino Quinden' Pasch' proxim' præterit' ita, &c. inter ipsum A. Petentem, & B. Tenantem, &c.* And there it shall be said in Craft' Quind' Pasc' because that the Pleas (a) cannot be holden Quind' Pasc', because that is Sunday, which is the Sabbath-day. And the King may grant this Writ by Testimony of his Steward thus:

Dyer 154.  
ante 15. P.

Rex, &c. *Quia A. fuit coram Sen' & Marescallo nostro die Lun' in Quinden' Sancti Johannis Baptist' proxim' præterit' in divers' inquisit', quæ coram iisd' Senesc' & Maresc. prædict' die sum' fuer' apud E. sicut idem Sen' noster coram nobis testificatus est: Vobis mandamus, quod præd' A. pro eo quod non venit coram vobis in aliis inquis' quæ coram vobis eod' die summon' fuer', non amerciemini, nec exitus, si in quos coram vobis ea occasione inciderit, perdere permittat'. Teste, &c.*

G And it seems by this Writ, that the Justices ought to make a special Entry thereof, and to save the Issue of this Juror, and also to make a special Estreat of this Matter, and to levy no Issues upon these Jurors, for whom such Writs come unto the Justices.

H And if a Man be effoined of the K. Service in any Action, &c. whereas in Truth he is not in the King's Service, then the Plaintiff or Demandant may sue forth a special Writ out of the Chancery, directed unto the Justices, rehearsing that he is not in the King's Service, commanding them to proceed. But by the Statute of Gloucester, if he do not bring his Warrant at the Day given, he shall lose 20s. for the Journey; and shall be in the King's Mercy, and the Effoin dissolved. And if the Plaintiff purchase such Writ directed to the Justices, that he is not in the King's Service, then the Effoin shall not be adjourned, but shall be presently quashed, and he shall not have Day by Adjournment to bring in his Warrant to warrant the Effoin.

(a) See the Case of *Haggard and Knevett*, 5 Mar. Dyer 154. & ante [15] P.

## \* Writ of False Judgment.

[18.]

22 Aff. 64.  
Br. Error  
120. If the  
Freeholders  
be recorded  
by Plea,  
where it  
ought to be  
by Writ, it

is Error, and not void, & *coram non judice*: But where Judgment is given of Lands, Contract, or Covenant, which is out of their Jurisdiction, it is void, & *coram non judice*.

**W**RIT of False Judgment lieth where False Judgment is given in the County, or in the Hundred, or in other Court-Baron which is not a Court of Record, in a Plea Real or Personal, as if in a Writ of Right Patent, or in other Personal Plea; there the Party, Plaintiff or Defendant, which is grieved shall have this Writ, and the Writ shall issue first out of the Chancery: And if the False Judgment be given in the Sheriff's County-Court, then the Writ shall be directed unto the Sheriff himself, and shall be such:

Henric', &c. Vic' Linc' salut'. Si A. fecerit, &c. tunc in pleno Com' tuo record' fac' Loquelam (a) quæ est in eod' Com' per Breve nostr' de Recto inter A. Petent' & B. Tenent', de uno mesuag' & cent' acr' terræ cum pertinen' in C. unde idem A. queritur falsum sibi factum fuisse judic' in eod' Com'; & Record' illud habeas coram Justic' nostr' apud Westm' tali die sub sigillo tuo, & per quatuor legal' Milit' ejusdem Com' ex illis qui Record' illi interfuerunt: & summ' per bonos Sum' prædict' B. quod tunc sit ibi, auditurus Record' illud. Et habeas ibi Summ', nomina quatuor Militum, & hoc Breve.

Vid. 4 & 5  
Ma. Dyer  
164. the Writ  
was chal-  
lenged be-  
cause it was  
sub sigillo tuo

& sigillis quatuor legalium hominum ejusdem curia, and good, ut semble. Vide Dyer 373. & infra D.

15 E. 3. 9.

And if the Tenant hath aliened the Land after Judgment given against the Demandant, then the Summons shall be made in the Writ against him who is Tenant of the Land, and against him who was Tenant at the Time of the Judgment given, by these Words, viz. & summ' per bonos Summ' præd' B. & C. qui mesuag' & terram illam nunc tenent, quod tunc sint ibi, audituri, &c.

And if the False Judgment be given in another Court-Baron than in the Sheriff's Court, then the Writ of False Judgment is called a Writ of *Accedas ad Curiam*, and shall be directed unto the Sheriff; and the Writ is such:

Rex Vic' Linc' salutem. Si A. fecerit te securum de clam' suo prosequend', tunc assumptis tecum quatuor discret' & legalibus Militibus de Com' tuo in propria person' tua acced' ad Curiam B. de C. & in plena Curia illa record' fac' Loquelam quæ fuit in eadem Curia per Breve nostrum de Recto inter A. Petent'

\* Note; In a Writ of False Judgment, if the Judgment be reversed, the Suitors are amerced, and the Court shall give the former Judgment which the Suitors ought to have given, 22 E. 3. 2. And Note; the Amerciament was altered by the Justices, 9 Eliz. Dyer 263. See Pas. 10 E. 3. Rot. 3. where by it appears, if the Plea be discontinued,

and afterwards the Plaintiff is Nonsuit, and Judgment final given against him on a Writ of False Judgment, he shall be restored to the Right only. See Dyer 373.

(a) Note; the Words *quæ est in eod' Com'* ought to be *quæ est in eadem Cur'*, &c. Quare. See Dyer 263.



tent' & B. Tenent', de uno mēsuag', &c. unde A. queritur falsum sibi factum fuisse iudicium in ead' Curia; & Record', &c. sub sigillo tuo, & (a) per quatuor legales homines ejusdem Curie ex illis qui Recordo illi interfuerunt; & summ', &c. & habeas ibi nomina prædict' quatuor hominum, & hoc Breve.

V. Supra B.

E And in this Writ of *Accedas ad Curiam* he shall take with him four Men, but it needeth not that they be Knights: But so shall it not be in the other Writ of *Recordari facias Loquelam*, which is in the County. But both Writs shall be returned under the Sheriff's Seal, and the Seals of four of the Suitors of the same Court. And in the Writ of False Judgment which is *Accedas ad Curiam*, it is a (b) good Return for the Sheriff for to say, that after the Receipt of the Writ, and before the Return thereof, no Court was holden; and also that he required the Lord to hold his Court, and he would not, so as he could not execute the same. And thereupon the Justices shall award a *Distingas* directed unto the Sheriff, to distrain the Lord to hold his Court; and *Sicut Alias*, &c.

F (c) In a False Judgment against an Abbot the Plaintiff was Nonsuit, and the Abbot had a *Scire facias* against the Plaintiff, to shew why he should not have Execution, and to have the Judgment executed returnable at 15 Pasch. at which Day the Plaintiff appeared, and assigned his Errors, and tendred Sureties to sue with Effect, and prayed a *Scire facias* against the Abbot to hear Errors. And the Opinion of the Court was, that he might assign the Errors against the Abbot, without suing any *Scire facias* against him, because they had Day by the Roll.

G (d) If the Writ of False Judgment abate for Default in the Writ, then the Plaintiff shall not have a *Scire facias ad audiend' Errores* upon the

(a) Note; 'tis per quatuor legales, &c. and not sub' Sigill' quatuor legalium hominum. Dyer 164. and see ib. 373.

(b) Note; If the Sheriff return that the Suitors will not Record *le parcel* (or Plea) a *Sicut Alias Distingas* shall issue against all the Suitors: And if at the Day some of the Suitors do appear, and others do not, the Court here shall accept the Record by the Hands of those that appear; for, perhaps, at the *Distingas sicut alias* the others will disavow the Record; but their Issues shall be saved, and the *Distingas sicut alias* shall issue as well against those that appear as against the others. And by *Hill*, If on the first Writ the Record had been delivered to four Suitors, and two of them had appeared, and the other two made Default, the Record had been (well) accepted. See 1 E. 3. 9. 26 E. 3. 61. 12 H. 4. 23. And an *idem Dies* shall be given to those that appear, according to 29 E. 3. 26. \* For it may be, that at the other Day those who now appear may make Default. But if the Sheriff returns the Names of those who refuse, the *Distingas* shall issue only against them;

and if any of them make Default, the Record shall not be received by the Hands of those that appear, but their Issues shall be saved, and a new *Distingas* shall go both against them, and those who made Default. 9 Eliz. Dyer 262.

(c) See 6 E. 6. Dyer 76. b. Error on a Judgment in a *Quare Impedit* the Record was removed, but the Party did not assign Errors; wherefore he that Recovered brought a *Scire facias* to have Execution. It appears the Party warned may come in at the Day to assign Errors without a *Scire facias ad audiendum Errores*. 21 H. 6. 34. & 20 H. 6. 18.

(d) If a Record be removed by Writ of Error, though the Writ be abated for Default of Form, yet the Judgment being of Record before the Writ of Error, and the Record being here, the Party shall have a new Writ of Error, *quoad coram vobis*: But, by the Writ of False Judgment, that which was (not) a Record before is to be made a Record; and therefore if the Writ be abated (as in a Writ of False Judgment on a Judgment in ancient Demesne, was in *Cur'*

\* 12 H. 4. 23.

Regis

the Record certified, because it cometh without an Original, when the Original abateth. But if the Plaintiff die, it seems that if the False Judgment be given in the base Court upon a Writ of *Droit Patent*, that then his Heir shall have a *Scire facias ad audiend' Errores* against him who recovereth upon that Record which is removed into the Common Pleas. And if the Plaintiff in the Writ of False Judgment be Nonfuit, whether the other Party shall sue Execution upon this Record so removed against the Plaintiff, without suing forth a *Scire facias*, is a Question. But *Hill. 23 H. 6.* the Opinion was, that he shall have Execution without suing forth a *Scire facias*.

20 H. 6. 18.

44 H. 6. 48.

31 H. 6. 51.

14 H. 4. 39.

7 E. 4. 23.

34 H. 6. 48.

Contrary, if

the Justices

be removed

in the Kings

Bench by a

Pone.

And Tenant at Will according to the Custom of the Manor, which H is Tenant by Copy of Court-Roll, shall not have a Writ of False Judgment upon a Judgment given against him : But where False Judgment is given upon a Writ of *Jussicies*, directed unto the Sheriff, the Party grieved shall have *Faux Judgment*, and not a Writ of Error, although the Judgment be of Debt, or Trespass, over the Sum of 20 s.

2 H. 4. 4.

21 E. 3. 45.

45 E. 3. 1.

ac. therefore

it seemeth

Error lieth

in a Court of

Pipowder.

Vide 13 E.

4. 18. 6 E.

4. 43. 72. 4.

23.

And a Man shall not have a Writ of False Judgment but in the Court where there are Suitors ; for if there be no Suitors, there the Record cannot be certified by them. And upon False Judgment given in Court before Bailiffs, or others who hold Plea by Prescription, in every Sum in Debt by Bill before them, he shall not have a *Faux Judgment*, but a Writ of Error thereupon. *Quod vide M. 4. E. 4. in Title Trespass. Post. 19. I.*

In

*Regis* where it should be *Regine* there is not any Record made or removed, but only an *Esfrow*, and is as if the Suitors had brought in the Record without a Writ to warrant it ; and therefore the Plaintiff in that Case, after such Writ abated, shall not have a *Scire facias* to warn the Party *ad audiendum Errores*, &c. But it seems the Plaintiff shall have a new Writ of False Judgment, because the Record is not removed : *Quare* ; for 'twas deny'd by *Rolph. 3 H. 6. 26.* But where a Writ of False Judgment abates by Death of the Party, there, for that the Record was well made and removed, a *Scire Facias* lies. *Dyer 164. 15 H. 6. F. False Judgment 17.* and so note the Diversity. In a *Recordari* out of ancient Demeſn, the Parol shall be remanded if the Plaintiff is Nonfuit. *2 E. 3. 29. 10 E. 3. 59.* And so if the Cause assigned be not sufficient or not true. *34 H. 6. 35.* See here [13.] B. C. But on a Writ of Error or False Judgment, if the Plaintiff be Nonfuit, Judgment shall not be affirmed or disaffirmed, but a *Scire fa ias* shall issue to have Execution upon the Record, *20 H. 6. 18.* and see there, if the Plaintiff be Nonfuit, he shall not assign Errors on the same Writ of False

Judgment, but (as it seems) is put to a new Writ. Yet *Quare* ; for the Record is here, and not in the Inferior Court. See *21 H. 6. 34.* in the Case of the Abbot of *Tavestock*. If the Plaintiff in a Writ of False Judgment be Nonfuit, and the Defendant sues a *Scire facias* to have Execution, &c. (1.) The Plaintiff may have a new Writ of False Judgment, &c. *quod coram vobis residet.* (2.) On the *Scire facias* to have Execution, he may assign his Errors without any new *Scire facias* ; because both Parties have Day in Court. (3.) It seems, that if the Plaintiff had appeared on the Writ of False Judgment before, now his Assigning of Errors shall not delay the Defendant of his Execution. In Error, if the Plaintiff be Nonfuit before *Scire facias*, whereupon the other sues a *Scire facias quare Executionem non*, &c. he may assign Errors on the same *Scire facias*. But if he had sued a *Scire facias ad audiend' Errores*, and afterwards became Nonfuit, there on the *Scire facias* by the other he shall have Execution, and shall not be driven to answer to the Errors *Quare*, and see the Book at large ; for the Case seems to be mis put.



**I** In False Judgment upon a Writ of Right Patent, or a Writ of *Droit* <sup>20 E. 3. pl.</sup> *close*, the Plaintiff shall not assign Errors before the Records certified, <sup>11. 31 E. 3.</sup> as well (a) the Original as the Residue of the Record. And the Writ <sup>pl. 10. 38 E.</sup> of False Judgment lieth against a Stranger to the Judgment, if he be <sup>3. 34. 25 E.</sup> Tenant of the Land, without naming him who was Tenant and Party <sup>3. pl. 9.</sup> to the Judgment. Otherwise it is of a Writ of Error, for there he ought to name him who was Party to the Judgment, be he Tenant or not. (b)

**A** And where the Tenant loseth his Land by False Judgment in a Writ of Right in a Court-Baron, he shall not have a Writ of False Judgment before that the Demandant hath entered upon him, &c. *Quod* <sup>[ 19. ]</sup> *vid. M. 38. E. 3. 15. Vid. 8 E. 4. 19.* <sup>21 H. 4. 23. contr' and 21 H. 6. 34. the Party had a Scire facias to have Execution out of the Common Pleas.</sup>

**B** And where the Defendant in *Faux Judgment*, after Appearance by him, maketh Default, a Grand Distress shall issue out against him. And if he again make Default, or cometh and will not save his Default, the Plaintiff in the Writ of False Judgment shall have Judgment to recover Seisin of the Land against him: *Quod vide M. 13 E. 2.* And the Writ of False Judgment given in ancient Demesne is such:

**C** *Rex Vic' salut' Si A. fecerit, &c. accedas ad Cur' B. &c. & recordari fac' Loquelam quæ est in eadem Cur' per parvum Breve nostrum de Retto inter A. Petentem, &c. & habeas ibi nomina prædict' quatuor hominum, hoc Breve, & aliud Breve, &c.*

**D** And in a Writ of *Droit close*, if the Writ of the (c) Demandant be abated, whereupon he bringeth his Writ of False Judgment in the Common Pleas, and there the Judgment is reversed, and the Writ awarded good; then he shall hold Plea in the Common Pleas, and a Judicial Writ shall issue from the Common Pleas, in Nature of Protestation made in the first Writ; and if the Protestation were in the Nature of Affize of *Mortdauncester*, the Justices shall direct a Writ unto the Sheriff to summon the Jurors to come out of ancient Demesne thither, and all the Matter shall be tried and determined in the Common Pleas: And although the Judgment be given of the Land in the Common Pleas, yet the Land shall be ancient Demesne. *Quod vide M. 3. E. 3. in Title of Faux Judgment. 4 Just. 270.* <sup>In Hill. 6. W. 3. B. R. int. Phillips and Bury, 'twas held by Holt accordant, and the Opinion of Dyer 373. denied, because not warranted by 34. Aff. 40.</sup>

G

And

(a) See 31 E. 3. F. False Judgment 10. If Judgment be given in a Court-Baron without an *Original*, and the Tenant is ousted, 'tis a Disseisin. See 19 E. 2. False Judgment 19 accordant. *Note*; a Copyholder shall be relieved by Petition to the Lord. *Mich. 8. 9 Eliz. Rot. 136. vide ante.*

(b) Or his Heir, &c. *Quare* if he dies without Heir. 9 H. 6. 46. and 49. But if another than the Heir be Tenant, 'tis the safer Course to have a *Scire facias* against him, especially before that the Court proceeds to the Examination of the Errors. So *quacunqve via*, there ought to be a *Scire facias* against him, either before the

Errors examined or after, for otherwise if he be ousted, he shall have an Affize. *Dyer 321.*

(c) And so it seems, whether the Judgment be affirmed or disaffirmed, Execution shall be awarded in the Kings Court. 39 H. 6. 5 a. and so on a Nonsuit, where a Writ of False Judgment is brought before Execution sued. 12 H. 4. 23. pl. 5. Yet see *Dyer 373.* If the Demandant brings a False Judgment, and it be reversed, he shall only be restored to his Action.

*Note*, that of a Judgment given in ancient Demesne of Lands at Common Law, a Writ of False Judgment does not lie, because it is *cora' non iudice.* 7 H. 4. 28 b.

And upon the Writ of *Faux Judgment*, which is an *Accedas ad Curiam*, E if the Sheriff return that the Writ *adeo tarde ven', quod Executionem ejusdem facere non potuit*; then he shall have a *Sicut alias* directed unto the same Sheriff: And if he return not that at the Day, then he shall have a *Pluries* to the same Sheriff. And he may have these Writs of *Alias* and *Pluries* out of the Common Pleas, where the first Writ was returned *tarde*, if he will, or he may have them out of the Chancery, &c. See for this Matter in the Book of (\*) *Entries*, fol. 114, and 115. And upon the *Accedas ad Curiam*, if the Sheriff return, that he will go unto the said Court, &c. and there pray the Lord to hold his Court, that he may do Execution of the Writ, and that the Lord refuseth to hold his Court, &c. by Reason whereof he cannot do Execution of the Writ; then a *Disfringas* shall issue out of the Common Pleas, directed to the Sheriff, to distrain the Lord, so that he distrain him to hold his Court at a certain Day appointed by the Sheriff; *Et quod Vice', assumpt' secum quatuor discretis Militibus*, &c. *de Comitatu', &c. accedat ad Curiam*, &c. & *Scire fac' hic in xv. Paschæ*, &c. & *Record' illud tunc habeat*, &c. & *quod summi' præd' I. quod sit ibi, auditurus Record' illud*, &c. *Quod vide Lib. Intrac', fol. 117.*

There is another Writ of *Faux Judgment*; when there is a *Plaint in F* the County of Debt or *Trespas*s without any Writ, then the Writ of *Faux Judgment* in the County shall be thus: *Recordari fac' Loquelam quæ fuit in eadem Curia sine Brevi nostro, inter*, &c. *de quadam transfr', &c. unde idem A. querit' falsum sibi fact' fuisse judic', &c.* And where *Faux Judgment* is given in another Court than the County, upon a *Plaint*, or upon a Writ, then the Writ shall be thus:

*Rex Vic' salut'. Si A. fecerit, &c. tunc accedas ad Hundr' A. de B. vel ad Curiam A. de C. & in pleno Hund' vel Curia recordari fac' Loquelam quæ est in eodem Hund' vel Curia per Breve nostrum, vel sine Brevi nostro, de eo quod idem A. teneat præfat' B. conventionem inter eos factum de uno Mesuagio cum pertin' in F. unde queritur*, &c.

And if a Baron and Feme be sued in a Court-Baron by a Writ of *G* Right, and the Feme is received for the Default of the Husband, and plead there, and false Judgment is given against him, she and the Husband may have a Writ of false Judgment, as appeareth by the Register.

And there is another Writ there, where the Husband and Wife pray to be received in a Court-Baron in a Writ of Right upon the Default of Tenant for Term of Life, and were not received; and for False Judgment given against the Tenant for Term of Life they shall have a Writ of False Judgment, &c.

There is another Writ of *Faux Judgment* in the Register for him in the Reversion, who prayeth to be received in a Court-Baron in a Writ of Right upon the Default of two Tenants for Life, where he was received for the Reversion of one of the Tenants, and the Receipt was counterpleaded for the Reversion of the other Tenant, and Judgment given, &c. And there it appeareth, that one Tenant was Tenant of certain

(\*) See 29  
H. 6. Fitz  
Return de  
Viscount 21.  
6 H. 7. 15.  
16.



tain Parcel of the Land, and the other Tenant was Tenant of the other Parcel of the Land.

I There is another Writ of *Faux Judgment* for him that hath Judgment given against him in the Court of a Lord, who hath Power to hold Pleas before his Bailiffs by the King's Charter : But it seemeth that in that Case he shall have a Writ of *Error*, and not a Writ of *Faux Judgment*. Ante 18 H. 32 E. 3. pl. 8.

K There is another Writ of *Faux Judgment* directed unto the Sheriff, viz. *Accedas ad Curiam : Ad Curiam nostram de Winchester, & in plena Curia illa record' fac' Loquelam quæ fuit in eadem Curia sine Breui nostro, secundum Consuetudinem Civitatis prædictæ, inter W. Petentem, & D. Tenantem, de uno mesuagio in Winch. prædictæ, unde idem W. &c. queritur falsum sibi factum fuisse judic', &c.* But upon Assize of *Fresh Force* a Writ of False Judgment doth not lie, but a Writ of *Error*. And if the Writ of False Judgment be returned before the Justices of the Common Pleas, and the Defendant comes and saith and averreth that the Record is otherwise than it is certified, the Averment shall be received, and that Issue shall be tried by the Country, or by those who were present in Court when the Record was made, and by others of the Country ; and if they come not, then the Enquest shall be by the Country, as appeareth by the Stat. *de Anno 1 E. 3. cap. 5. Rastal, Faux Judgment 2.* [ 20.] E. 3. c. 5. 34 H. 6. 42.

## Writ de Executione Judicii.

A WRIT *de Executione Judicii* lieth where Judgment is given in the Court of any Lord upon a *Writ of Right Patent*, or upon a Plea of Debt, or Trespas, in the same Court. or in the Hundred, County, Court-Baron, or in any other Court of Record ; and if the Sheriff, or the Bailiff will not do Execution of the Judgment, then the Party shall have this Writ directed unto the Sheriff, or the Bailiff, in which Court the Execution ought to be ; and if they will not do Execution, he shall have an *Alias* and a *Pluries*, with this Clause in the Writ of *Pluries*, *vel causam nobis significes quare, &c.* And if they do not Execution upon this Writ, or return not some reasonable Cause wherefore they delay the Execution, the Party shall have an Attachment against him who ought to have done the Execution retournable into the King's Bench, or into the Common Pleas. And if the Plea be in the Lord's Court-Baron, then the Writ of Execution shall be directed unto the Bailiff of the Court. But if the Plea and the Judgment be given in the Sheriff's Court, as in the County-Court, then the Writ shall be directed unto the Sheriff himself to do Execution, and the *Alias* and *Pluries* shall be to the same Sheriff ; and if they will not do Execution of the Judgment, then an Attachment against the Sheriff shall be directed unto the Coroners, returnable as abovesaid, to answer, &c. And so if the Writ *de Executione Judicii* be directed to the Bailiffs of any Court of any Lord, or unto the Bailiffs of a

Hundred, to do Execution, and at the *Alias* and *Pluries* they will do nothing, the Attachment shall be to the Sheriffs against the Bailiffs, returnable as aforesaid, to answer, &c. And if the Judgment be in a Court of Record, then it seemeth that the Writ de *Executione Judicii* shall be directed unto the Justices of the same Court where the Judgment was given, to do Execution, and not unto the Officer of the Court. For if the Officer of the Court will not execute the Writs directed unto him, nor return them as he ought, the Judges of the Court may amerce him. The Form of Writ is :

*Henr', &c. Lancastr' salut'. Præcip' tibi, quod Execution' judicii nuper C reddit' in Com' tuo de Loquela quæ fuit in eodem Com' per Breve nostrum de Recto, inter A. Petentem, & B. Tenentem, de uno mesuagio cum pertin' in I. sine dilacione fieri fac', &c. Teste, &c. (a)*

## (b) Writ de Error.

23 H. 6. 11. **A** Writ of Error properly lieth where False Judgment is given in **D**  
The form of Writ of Error to the Justices of the Common Pleas is *Fob. Prisot Capital. Just. & sociis suis, & non Capital. Just. tantum* ; for the Records there are not before him alone. But in the Exchequer the Writ is not *Thesaurario & Baronibus*, but *Baronibus tantum*. 34 H. 6. 27. Error was brought 3 die from the Return, where the Judgment was the first Day, and well, because after the Judgment. 15 E. 4. 18. If a Record be removed out of the Exchequer into the Exchequer-Chamber by Error, when Judgment is given, all shall be remanded into the Exchequer, and Execution shall be awarded there ; but that is by the Statute of 31 E. 3. cap. 12. otherwise it is of other Courts.

## Trespafs

(a) Of Execution, &c. in a Court-Baron. In Replevin the Defendant pleads, That he recovered on a Plaint in Debt 38 s. affirmed in the Court-Baron of I. S. and that the same Cattle were taken by the Bailiff in the Place where, being the Fee of the said I. S. and delivered to the Defendant in Execution, and he was not driven to Gage Deliverance, for he claimed Property, and the Issue was, That they were not taken and delivered to him in Execution ; & *aili contra* 38 E. 3. 3.

And a like Case was thus: A brought a Writ of Right close in ancient Demesne against B. of 10 Acres, and made Protestation in Nature of an Assize, and recovered ; and C. being the Bailiff of the Court took an Ox of B's on 5 Acres Parcel of the Land recovered (but in Fact those 5 Acres were held at Common Law by Virtue of a Fine levied before the Recovery)

and sold the Ox to D. and B. brought a Replevin against C. the Bailiff, and 'twas adjudged. 1. That if the whole had been so held by Fine at Common Law, it had been *Coram non Judice*, and void. 2. For that Part only was ancient Demesne, yet till Judgment reversed the Damages (are leviable. 3. That he might well take the Beasts by the Execution in any Place within the Manor which is ancient Demesne, tho' the Place where he took them is not ancient Demesne. 4. That the Sale was a good Execution, &c. 7 H. 4. 28. Yet See the contrary *per Cur'* 4 H. 6. 17. and 22 Aff. 72. *per Thorp*, in the Case of a Recovery in a Court-Baron in Debt. *Ergo Quare & Vide optime Rot. parl.* 21. E. 3. No. 21.

(b) But not the Writ original. 24 E. 3. 24.



Trespas over the Sum of 40 s. And if False Judgment be given in London, or other Place, which is a Court of Record, the Party grieved shall have a Writ of Error, and this Writ may be returned into the Common Pleas, or in the King's Bench, at the Pleasure of him who sueth the same.

E And when the Record is removed by Writ of Error into the Common Pleas or King's Bench, then the Plaintiff ought to assign his Error, before he have a *Scire facias* against the Defendant *ad audiendum errores*. And if he assign divers Things for Errors, which the Court thinketh to be no Errors, he shall not have a *Scire facias* upon this Assignment. But after Errors assigned, and a *Scire facias* awarded against the Defendant upon that Assignment, he shall not assign an Error in Fact, as to say, that the Plaintiff was dead at the Time of the Judgment, or before the Judgment, &c. But he may assign as many Errors as do appear in the Record, and it shall not be said a double Assignment. But he shall assign for Error but one Error in Fact, because this Error in Fact shall be tried by the County, and the Errors in the

F Record shall be tried by the Justices.

And upon a Writ of Error the Record itself (a) shall be removed, and not the Transcript of the Record; for upon a Transcript of a Record a Man shall not assign Errors, if it be not upon a Writ of Error sued upon Transcript of a Fine, there he shall assign Errors (b) upon the Transcript of the Note of the Fine; and if the Justices do con-

ceive Writ.

37 Aff. 17.  
for assign-  
ment of ma-  
ny Errors in  
Law.

38 H. 6. 30.  
Note; that  
the Party as-  
signed Error  
upon an Is-  
sue, and the  
Court saw  
the Original  
that it was  
not good,  
for it was *ex*  
*assignatione*,  
where it  
ought to be  
*ex divisione*,  
and there-  
fore the  
Court *ex of-*  
*ficio* did a-  
bate the

(a) *Ibid.* And a *Scire facias* lies on such a Transcript; also it seems that Judgment shall be given before they remand it, to prevent Loss of the King's Fine. *Lib. Intr.* 296. m. 16 E. 3. See 21 E. 3. *contr.* See also 22 E. 3. 6. the Reason, *viz.* Because that which is sent into B. R. shall not be remanded, and therefore a Writ was sent to the Treasurer and Chamberlains (of the *Exchequer*) to send the Fine extracted out of the Files on a Judgment reversed. See 1. *Mar. Dyer* 89. *Varney's Case*; for there is no Chirographer there if the Fine be affirmed. See 10 *Eliz. Dyer* 274. pl. 44.

See a Fine it self removed out of *Oxford* 50 Aff. 9. The Plaintiff had Judgment, and the Defendant brought Error and removed the Record, the which he let lie, without suing a *Scire facias*; the Plaintiff prayed Execution, and had a *Scire facias*, and upon 2 *Nihil* returned Execution was awarded, and at the Exigent the Defendant comes and prays a *Scire facias*, and had it, for that he was not named, for *Exactus fuit* is upon the *Scire facias* to have Execution, and not on the Writ of Error. 8 H. 6. 13.

Note; If 2 Defendants bring several Writs of Error, and several *Scire facias*'s, yet they may assign and continue the Er-

rors in Common. 11 E. 4. 92. adjudg'd. But if there be a Variance between the Record and the Writ, there altho' a Transcript of the Record be sent into B. R. and a *Mittitur* into the Rolls of C. B. yet the Record remains in C. B. and there shall be Execution granted, as if a Writ of Error be to send the Record of a Recovery by A. against B. and the Record of a Recovery by A. against C. is sent, this is without Warrant, and the Record still remains in C. B. 9 H. 6. 4. See 24 E. 3. 24. 43.

Note; Baron and Feme acknowledge a Deed, which is after enrolled; the Baron dyes, and the Feme brings Error to reverse the Deed, for that it was enrolled by her being a Feme Covert, and for that the Court could not examine her without a Writ; and 'twas admitted to be good. 21 E. 3. 43.

(b) *Of Assigning and Examining Errors.*

In Redisseisin the Defendant is outlaw'd and taken, and then brings Error of the principal Judgment and of the Outlawry and assigns Error in the Principal, and 'twas held. 1. That the Outlawry shall not be reversed, without making the Plaintiff a Party by *Scire facias*, for the Defendant

ceive it Error, then they shall send for the Note of the Fine, and shall reverse the same. *Vide post.* 72. D.

In a Writ of Error, when the Record cometh in Court, if the Plaintiff all that Term do not assign his Errors; and although that he do assign his Errors, if he do not sue a *Scire facias ad audiendum Errores* against the Defendant, returnable the same Term, or the next Term; all the Matter is discontinued, and the next Term he ought to sue a new Writ (a) of Error out of the Chancery, upon that Record directed

Defendant is in Execution for him. 7 H. 4. 40. 2. That he might well have a Writ of Error to reverse both the principal Judgment and the Outlawry. 11 H. 4. 66. and may assign Error in the Principal, before he resorts to the Outlawry, for by reversing the Principal, he reverses the Outlawry. 11 H. 4. 6. 8 H. 7. 10. 7 H. 6. 44. *contra.* 7 H. 4. 40. 3. He may sue to reverse the Outlawry without finding Sureties for the Damages here. For by defeating the Outlawry, the Imprisonment is gone. 7 H. 4. 40. 4. If the Party pleads a Release of the Right to the Land, he shall be disabled to reverse the Principal, and yet he may assign Error in the Principal, as in the Original, or in the Judgment, and thereby reverse the Outlawry, altho' there be no Error in that Process. 11 H. 4. 6. adjudg'd.

See 18 H. 6. 18. The Defendant in an Assize was taken by a *Capias pro Fine*, and sued a Writ of Error, and found Sureties to sue with Effect, and to pay the Fine to the King, and to satisfy the Party, if Judgment was affirmed, and all this was in Chancery; and thereupon he had a Writ to the Justices to deliver him and to send the Record into B. R. and it was so done, and there he assigned Errors which were no Errors, whereby no *Scire facias* issued, and 'twas moved that a new *Capias pro Fine* should issue, for that the Party had Interest in the Execution, so that on the said Sureties found in Chancery, he ought not to be dismissed, and therefore the Dismissal was Erroneous, for he ought to have had a *Habeas Corpus*, and removed his Body, and thereon to have found Sureties to satisfy the Party, or to render his Body to Prison again, if Judgment were affirmed.

(a) Note, If matter of Fact be assigned for Error, as that the Party's Attorney was Judge, &c. if the other pleads *in nullo est Erratum*, and confesses the Matter of Fact, and puts it in Judgment of the Court. *Si Error*, &c. as 3 E. 6. Dyer 65. He may de-

mur thereto, and See Dyer 104. a Demurrer on the Errors assigned. And Note; the Defendant may assign for Error, that his Attorney had no Warrant, altho' he acted for his Advantage. 7 H. 4. 16. 11 H. 4. 44. & 88.

(a) See Error on a Judgment in Chancery on a *Scire facias*, upon a Recognance there, and reversed in B. R. 14 Eliz. Dyer 315. And see Error in Chancery on a Judgment given in Chancery. 42 Aff. 22.

Note; In Darrein Presentment, the Parties demur, and adjudg'd against the Defendant, for that he had brought a Writ of Error before the Damages were taxed; for the Assize in such Case is to inquire into the point of Damages, and yet 'twas adjudg'd, that a Writ of Error lies for that Judgment is rendred upon the Principal, (*i. e.* the Right of Presentation.)

So where Damages are to be Taxed in a Writ of Ayel. 17 E. 3. 5. 21. 23. Aff. 8.

Note; such Court as may hold Plea above 40 s. is a Court of Record, and yet may be by Prescription. 9 H. 7. 11. 45 E. 3. 2 a. 18 H. 6. Prescription 45. *per Cur.* 19 H. 6. 79. 8c. Where one prescribes to hold Plea by Plaint in his Court of all Debts. 4 E. 3. 36. He that has Conuzance of Pleas has a Court of Record. 9 H. 6. 58, 59.

Note; If the Plaintiff be Nonsuit, &c. the Court ought not to examine the Errors. 21 E. 4. 44. But if the Defendant Pleads in Bar of Error, &c. as by Release, &c. yet if it be found against the Defendant, they shall examine the Errors. 21 E. 3. 54 b. 8 E. 4. 8. and if it be found for him, the Judgment shall not be affirmed or rever'd, but the Plaintiff shall be barr'd. 9 H. 6. 48. 49 a.

Note; An Infant brought Error of a Fine levied by him to A for Life, remainder to B. he cannot reverse it without warning B. 21 E. 3. 56 a. Also, where A. recovered against B. and enfeoffed C. and died, B. brought Error, and 'twas held, 1st. That the Judgment shall not be reversed with-



rected to the Justices before whom the Record is removed, to proceed upon the Record *quæ coram vobis residet*.

The Form to assign Errors is to put a Bill into the Court, and to say in the Bill, *in hoc erratum est*, &c. and to shew in certain in what Things; and *in hoc erratum est*, and shew in certain another Thing; and so of the rest in which he will assign the Errors. But to say *in omnibus erratum est*, is not good, because of the Incertainty.

**A** And in a Writ of Error he ought to assign his Error in proper Person, and not by Attorney, where he is in Execution by Force of the Judgment. And in a Writ of Error upon Judgment given in the Common Pleas, the Plaintiff cannot assign for Error, that the Justices of the Common Pleas did not give that Judgment, but the Clerks of their own Heads; neither can he assign for Error, that the Jurors gave their Verdict for the Defendant, and that the Justices entered it for the Plaintiff, and gave Judgment for him, because that this Assignment is contrary to that which the Court doth as Judges, &c.

**C** And if a Man be vouched, and entereth into Warranty and loseth, he may have a Writ of Error, and assign the (a) Errors which happened betwixt the Demandant and the Tenant, or betwixt the Demandant and the Vouchee. And so he in the Reversion who prayeth to be received upon the Default of the Tenant for Life, or for his faint Pleading, if he be received, and pleadeth, and loseth, he shall have a Writ of Error, and assign the Error betwixt the Demandant and (b) the Tenant, or between the Demandant and him who prayeth to be received. And if Tenant for Life loseth by Default, he in the Reversion shall have a Writ of Error, although he were not received, nor prayed to be received, and shall assign for Error the Matter which was betwixt the Demandant and the Tenant who lost by Default. 8 H. 4. 55, 56.

**D** A Man shall assign an Error in Law as the Case is: As if the Husband and Wife levy a Fine of the Lands of the Wife unto a Stranger, the

out making the Heir of A. a Party by Garnishment, either as to the Land or the Persons. 2. That he might have a *Scire facias* against the Heir and Tertenants in the same Writ without naming the Tertenants Names, or, 3. He might have a *Scire facias* against the Heir, *ad audiend' Errores*, and afterwards a *Scire facias* against the Tertenants, to have Execution. 8 H. 4. 17, &c. or if he has no Heir, a *Scire facias* lies against the Tertenants. See 8 H. 6. 35 b. A. being Guardian of B. recovers in a *quare impedit*, and dies, the Defendant brings Error, and after a *Scire facias* by C. the Heir of A. against B. and the Incumbent, not naming A.'s Executor, yet adjudg'd Good. For A. was Guardian by reason of the Seigniorie. See a *Scire facias* against a Defendant in the same Writ of Error. 34. Aff. 7. or 17. 8 H. 6. 35 b.

(a) Note; He who is only Tenant in Law

may have Error, as if the Tenant aliens pending the Writ, and afterwards Judgment is given against him. 21 E. 3. 53. 54. F. Error 4. 12 Aff. 41. he may bring Error, and if he reverses the Judgment, the Feoffee may enter upon him.

So he in Reversion or Remainder on an Estate, Tail may assign, &c. Dyer 188. And thereupon the Tenant shall be restored. 8 H. 4. 5.

See 4 Eliz. Dyer 241. 21 H. 6. 29. 15 E. 3. 1. Error 72. 32 E. 3. Error 73. Post. 108. A.

(b) Note also; the Vouchee may assign Error between the Demandant and Tenant, and so of Tenant *per Resciet*. 8 H. 4. 5. 8 H. 4. 3. But the Tenant (himself) shall not have Error, because he is out of Court. *Quere*, 17 E. 2. Recovery in Value 32.

35 H. 6. 12. If the Writ of Error hath longer Day of Return than it ought to have, the Justices of the Common Pleas may shorten the Day. 5 H. 7. 3. 8 H. 7. 10. 7 H. 7. 4. 21 H. 6. 43. [21.]

3 Co. 40. 50 E. 3. Aff. the Reversion was granted to one pendant the Writ against the Lessee for Life; or if the Tenant in Fee pray in Aid of a Stranger, *Quere*, for in these Cases he in the

Reversion shall have Error. 50 E. 3. 5. the Wife being within Age, they shall have a Writ of Error during the Nonage of the Wife, and shall assign that for Error, and that is an Error in Law of the Court.

But *Quære*,

if the Judgment shall be reversed, and that Execution shall be awarded, or shall cease during the Life of the Husband.

20 Aff. 2. c. Also in a Writ of *Entrie sur Disseisin*, if the original Writ want these E  
3. ac. 21 E. Words in the Writ, (a) *Quam clamat esse jus & hæreditatem suam*, if the  
3. Fitz. Er- Tenant admit of the Writ, and plead to the Action, and loseth, he  
ror 4. 7 H. shall not assign this Fault in the Writ, because he hath admitted the  
639. Matter Writ to be good by his Plea. And so in a Writ of *Detinue of Charters*  
in Fait must concerning (b) certain Lands, if the Plaintiff in his Count do not de-  
be pleaded, clare the Certainty of the Land in the Count, if the Defendant do ad-  
and shall not mit the Count good, and pleadeth unto the Action, and loseth by Judg-  
be assigned ment given in a Writ of Error sued by him; he shall not assign for  
for Error. 8 Error the Fault in the Count; because he hath admitted the same to  
E. 4. 19. By be good by his Plea. *Tamen Quære*.  
*Pigot* and  
*Choke*, in  
Joynt-tenan-  
cy, General  
Tenancy, Misnomer, taking of Husband pendant the Writ, and the like, which prove the Writ a-  
batable; there if the Party plead other Matter, and admit the Writ, he shall not have Error: *Con-*  
*tra* of Death or other Thing, which prove the Writ abated.

8 H. 5. 2. (c) And a Man shall not assign for Error a Thing which is for his F  
5 Co. 40 a. Advantage: As to say and assign for Error that he had Day, and that  
8 Co. 59 a. the Day was for longer Time than the common Day; and so he shall  
40 E. 3. 15. not assign for Error that he was not essoined, where he ought not to be  
vid. 21. E. 3. essoined, or had Aid granted unto him, where he ought not to have  
46. Br. Er- had Aid; because these Things are for his Advantage. *Post*. 22. D.  
ror 65. and  
Trial 35. (d) If false Judgment be given before the Justices of the Bishop of G  
19 H. 6. 12. *Durham* in the County Palatine, the Party grieved shall have a Writ  
False Judg- of Error there before the same Bishop *M. 14 E. 3.* And if he give  
ment in false

(a) See 21 E. 3. 54. F. Error 4. If an Avowry be quashable, for that it is returned by the Bailiff of the Franchise, where it should be recited by the Sheriff, or if the Writ be abatable and not challenged; this shall not be assigned for Error; *contra*, if it be abatable, *per Officium curie*. 3 H. 4. 7.

(b) See a Judgment on an Indictment of Conspiracy, where the Defendant had pleaded Not guilty, revers'd, for that the Place where, and the Day of Conspiracy were not shewn. 24 E. 3. 75.

(c) An Attorney appears for one without Warrant; 'tis Error. 7 H. 4. 16. At the grand Cape, one appears as Attorney for the Tenant, and wages his Law of Non-summons, and at the Day makes Default, the Tenant brings Error, and Assigns that the Attorney had no Warrant; and by

the better Opinion Judgment was revers'd. For the Continuance was taken without the Party, and the Judgment could not be good on the second Default; for it is but a Judgment by Default, &c. and there ought to have been two Defaults recorded against the Tenant. See 8 H. 5. 2. 14 E. 3. Error 6. 19. H. 6. 12.

(d) See the Form of a Reversal of a Judgment in *Chester*. *Lib. Intr.* 290 a. b. *Reg.* 17. 6 H. 4. 9. 34 H. 6. 42b. *Dyer* 320, 321, and 345. *Note*; Error lies not on a Judgment revers'd in the Cinque Ports, but *coram Custode quinque Portuum*. See *Dyer* 376. Also a Judgment in *Durham* shall not be revers'd in C. B. but in B. R. *Post*. 29 *El.* 3 *Hughes's Abr.* 207. *Morton's Case*. See 14 E. 3. F. Error 6. and 8 *Eliz.* *Dyer* 250.



false Judgment, then the Writ of Error shall be sued in the Common Pleas, or in the King's Bench. 22 E. 3. 3. 23 E. 3. 22. 2 R. 3. 2. 7 H. 6. 28. Wales before Justices, Errors there shall be reversed in

B. R. if there be Justices there; but by *Fortescue* it shall be reversed in Parliament, 19 H. 6. 12. Error in County Palatine shall be reversed in B. R. 21 H. 7. 33. per *Fineux* Erroneous Judgment in County Palatine shall be reversed there by Commission. 37 H. 6. 13. Error in Chancery reversed in Parliament. But see 14 *El. Dyer* 315. That Error upon a *Scire facias* upon a Recognisance was reversed in B. R. which seemeth contrary to 37 H. 6. 13.

H And if a false Judgment be given for the King in any Suit or Action, the (a) Party grieved shall have a Writ of Error, and assign his Errors, without suing forth any *Scire facias* against the King *ad audiendum Errores*, because that the King is always present in Court; and that is the Cause of the Form of Entries of Suits for the King is such: Christophor' Hales, *Attorn' Domini Regis, qui pro Domino Rege sequitur, &c. ven' hic in Cur'*, &c. and not, *Dom' Rex per C. H. Attorn' suum, ven' hic in Cur'*, because that the King is always present in Court. 7 H. 4. 37.  
1 H. 7. 13.  
2 R. 3. 2.  
25 E. 4. 7.  
1 H. 7. 13.  
It is said, if any be to

reverse Outlawry in Felony, when he cometh in upon the Indictment, he shall assign his Error before he prosecute his Writ of Error.

I (b) Error in the King's Bench in the Process where it is the Default of the Clerks, shall be reversed in the same Court by a Writ of Error sued by the Party before the same Justices: But not without suing of a Writ of Error, although it be the same Term. But in the Common Pleas, after Judgment given the same Term the Justices may reverse their own Judgment upon Error in the Process, or for Default of the Clerks, without any Writ of Error sued forth; but in another Term, the Party ought to sue forth a Writ of Error thereupon returnable into the King's Bench. But of an Error in Law which is the Vide 4 E. 4. 41. 24 E. 3. 34. 7 H. 6. 28. *Hidebrad's Case*. 19 H. 6. 2. 15 E. 4. 78. 37 H. 6. 17. per three Justices. If a Man be utlage notwithstanding a *Superfedeas*, and appear and Plead in the Common Pleas, the Utlary shall be reversed in the same place, altho' it be in another Term; but *contra*, if it be in another Term, but Defendant doth not appear and plead.  
H Default

(a) Note; he ought first to sue by Petition to the King. See where a Writ went to the Justices to examine the Errors, *hoc non obstante*. 24 E. 3. 35. 36. *Hill*. 29 *Eliz*. 3. *Hughes* 308.

(b) See the Form of a Writ of Error in Parliament, *Dyer* 375.

As if before the *quintus Exactus*, the Party appears, and has a *Superfedeas* of Record, be it in Term or in the Vacation, tho' it is not shewn to the Sheriff at the Day of the Exigent or *Capias utlagatum*, he may avoid the Outlawry the same Term, in C. B. *contra* in B. R. See 4 H. 4. 1 a. b. 4 E. 4. 42. 10 H. 7. 16. 9 H. 6. 12. 44 a. b. And if he comes in at the Return of the Exigent, he may reverse it in B. R. with-

out a Writ of Error; per *Westbury*: And See there if Judgment be given; where there is a Default in awarding the Process, or in the Return, 'tis ill. For there the *Tales* was returned without being awarded, and on a Writ of Error brought, three Points were agreed, *viz.* 1. That tho' on an Erroneous Judgment given on an *Original* in B. R. Error does not lie there, except for Error in Process by Default of the Clerk, or in the Return by Default of the Sheriff: Yet there *i. e.* in C. B. a Writ of Error, shall be granted for Error, either in the Record, or in the Process, or in *Redditiōe Judicii*. 2. That in the same Term the Roll is not recorded, but is only in the Breast or Remembrance of the Judges, and therefore

Default of the Justices, the same Court cannot reverse the Judgment by a Writ of Error, nor with a Writ of Error, but this Error ought to be redressed in another Court before other Justices by a Writ of Error.

And he which confesseth the Demandant's Action shall have a Writ of Error to reverse that Judgment, against his Confession upon Erroneous Judgment given.

Yet Note, 9  
H. 7. 24. is  
that the Heir  
at the Com-  
mon Law,  
shall have it.  
3 H. 4. 19.  
the Daught.  
to the Tail  
brought Er-  
ror, altho'  
a Son were  
Heir at  
Common  
Law. Vid.  
1 Ma. Dyer  
89, 90.  
20 E. 3. Fitz.  
Error 2.  
11 H. 4. 65.

In Plea of Land against the Tenant, and the Tenant dieth, he (a) who is Heir of the Tenant to that Land shall have a Writ of Error, and not he who is his Heir at the Common Law: As in Borough-English, if the Tenant lose the Land by Erroneous Judgment, the youngest Son shall have the Writ of Error. (b) And so he which is Heir unto the Special Tail shall have the Writ of Error, if the Land be lost by Erroneous Judgment: The Tenant may have one Writ of Error, and the Vouchee another Writ of Error upon the same Judgment; and so the Tenant, and the Vouchee by Receipt, and all depending at one Time. And an Executor or Administrator shall have a Writ of Error upon a Judgment given against the Testator for Debt or Damages. And so the Heir shall have a Writ of Error to reverse an (c) Outlawry of Felony pronounced against his Father, to restore the Blood betwixt him and the Father. And if a Man plead in any Action, and the Justices will not allow thereof, and the Party makes his Bill upon it, and prayeth that the Justices will Seal this Bill of his (d) Exceptions or Plea; and if they

therefore in the same Term they may amend by the Common Law, even after Judgment; yea, tho' a Writ of Error be brought. (See *Tutchins Case* 6 *Mod.*) And in C. B. where in the principal Case, a *Tales* was in Fact awarded, but not entered on the Roll, it was amended after a Writ of Error brought, it being in the same Term. 7 H. 6. 28. See 2 R. 3. 21. and 8 H. 6. 37.

See *Dyer* 195. an Outlawry after Judgment revers'd, because altho' a *Capias* lay on the Writ, yet the Process for it was not till after the Judgment discontinued. And Note; If a Plea be discontinued, and the Plaintiff be afterwards Nonsuit, yet he shall have Error or False Judgment, as his Case is. 22 E. 3. 2a.

(a) See accordingly 3 H. 4. 19. And that the Writ shall be brought generally as Heir, and that on Exception taken thereto, that he is not Heir, he shall shew the Special Matter. See 9 H. 7. 24 b. *contra*, viz. A. and B. his Wife are Tenants in Tail Special, and to their Heirs; they have Issue C. A. dies, B. and C. levy a Fine, C. dies without Issue, D. as Heir to C. brings Error, &c. 1. For that it does not appear that C. was Heir to the Wife, &c. 2. That he ought to make him Heir to A. for he may be only of the

half Blood to C. And See *Vernay's Case* in *Dyer* 89. In a Suit brought as Cousin and Heir, he shews how he is Heir.

(b) See 8 H. 4. 3. accordant; and if Judgment be revers'd against the one, it shall be revers'd against both. See 2 H. 7. 10. And *supra* the Notes *Fol.* 21. C.

(c) But he ought to sue a *Scire facias*, that the Lord may seize for the Escheat. 8 H. 6. 2. *pl.* 9 *ult.* *Lib. Entr.* 308 b.

Note; Error in the principal Judgment shall reverse the Accessary, and *e contra*. If a Judgment be of Record against a Parson in Annuity, in a *Scire facias* against the Successor; he shall not plead in Bar of Execution, that the Judgment was Erroneous, and if he does so, Execution shall be awarded; and if he after brings Error on the Judgment, if on the *Scire facias* he assigns Error in the principal Judgment; this is not good, altho' the whole Record of the Judgment be recited in the *Scire facias*; and therefore if the Judgment be affirmed on the *Scire facias*, yet he may have Error on the Principal, and thereby reverse the Judgment on the *Scire facias*, and he shall be restored to all that he lost on the *Scire facias*: Adjudged 11 H. 4. 47. See 9 H. 6. 13. accordant.

(d) See 11 H. 4. 52. *per Huls.* the Bill of Exceptions is no Part of the Record, before



they do not according as is contained in the Statute of *West. 2. cap. 3.* the Party grieved shall have a Writ of Error, and may assign Error upon that Bill so sealed, and also in the Record, or in one of them, at his Pleasure: But this Bill ought to be sealed by the Justices before Judgment given by them, and not after, as it appeareth *An. 11 H. 4. 52, 65, 92.*

[ 22.]

**A** The Successor of an Abbot, Prior, or Parson, or such Bodies Corporate, shall have a Writ of Error of a Judgment given against their Predecessor; of all Things which touch the Succession or Corporation. But if a Man recover against a Parson or a Bishop, Debt or Damages by Judgment or Action Personal, their Executors shall have the Writ of Error upon that Judgment, and not their Successors, because that Matter doth not concern the Corporation.

*Vid. 3 H. 3. the last Case, Vid. devant 21 L. M. N. 16 E. 3. Error 69. 12 H. 8. 8. ante M.*

**B** If a Man sue forth Execution erroneously against the Recognisor upon a Recognisance, the Feoffee of the Recognisor shall have a Writ of Error. (a) If a Man purchase his Pardon of an Outlawry, yet he may have a Writ of Error to reverse the Outlawry. *H. 18 E. 3.* (b) But if

*18 E. 3. 25. 17 Aff. 24.*

**C** a Man do disclaim in a *Præcipe quod reddat* of Land, and the Demandant doth recover, the Tenant shall not have a Writ of Error against his own Disclaimer: But if he plead *Non-tenure*, and the same be found against him, for which the Demandant recovereth, the Tenant shall have a Writ of Error. *H. 6. E. 3.* A Man condemned shall not assign Error in the Process; but in the Original Writ he may.

*Error 71. yet the Lord by Escheat shall not have Error.*

**D** It is no Error to suffer one to make Attorney in an Action in which he ought not to make any Attorney. *7 H. 6. 21.*

*15 Aff. 8. and so 9 E. 4.*

**E** (c) Upon false Judgment given in the Common Pleas in *Ireland* the Writ of Error ought to be sued there; and returnable in the King's Bench in *Ireland*; but upon a Judgment given in the King's Bench in *Ireland*, the Writ of Error shall be sued and returned in the King's Bench in *England*.

*14. that a stranger shall not have Error, 6 E. 3. 7. Fitz. Error 78.*

*21 H. 7. 31. 5 E. 2. Error 89. no Error shall be brought here but upon De-*

Original here, fault of Justice of the King's Bench in *Ireland*. And note that it is said, that there is no Error here, but the same remains there; and so is *37 Aff. 5. Fitz. Aff. 328.*

H 2

(a) When

before that it be acknowledged, (*i. e.* entered, &c.) And *11 H. 4. 65.* By good Opinion, one of the Justices may deliver the Bill into Court without a *Scire facias*; yet in that Case a *Scire facias* issued, and the Justices came and acknowledged their Seals; and 'twas held that this Acknowledgment of the Justices might be made long Time after the Writ of Error brought, and after the *Scire facias* awarded, and that no new *Scire facias* shall issue; for it is now become Parcel of the Record *ab initio*, as in the Case of Diminution alledged after a *Scire facias*. The Defendant shall not alledge Diminution in the Bill of Exceptions, but ought to have shewn his Case when the Justices came to set their Seals. See *1 H. 4. 92.*

*H. 4. 92. per Gascoign, and Huls.* 'twas held clearly, that the Bill may be sealed after the Record removed by Writ of Error.

(a) *Post 104. G.* See *24 E. 3. 42. 43.* accordant. But he shall not be restored to his Chattles against the King, and *Note*; the Error there was a Discontinuance of the Process. See *3 H. 4. 10.* accordant. Yet it cannot be alledged at the *Scire facias*, without the Charter (or Writ) returned, and the Plaintiff has counted. *vide Post. 104. G.*

(b) See *3 H. 4. 20. 19 E. 3. Error 75. 6 E. 3. 7. 36 E. 3. Error 6. and 82.*

(c) Of Errors to reverse Judgment in *Ireland*, see *Shower's Parliament Cases.*

And to reverse a Judgment of Reversal given in the King's Bench in *Ireland*, see *34 Aff. 7.*

See also *11 H. 4. 67. and Note 11*

(a) When the Record cometh into Court by a Writ of Error, the Plaintiff shall assign his Error, and shall have a *Scire facias* before the Record shall be entered; for the same shall not be entered before the Parties have Day by the *Scire facias*.

And the Procefs in this Writ is *Alias* and *Pluries*, and upon that Attachment shall be awarded against the Judge, who ought to return the Record, to whom the Writ was directed: And the *Pluries* may be returned into the Common Pleas, or into the (b) Chancery, if the *Pluries* issueth to the Justices of the Common Pleas to remove the Record; and if the Writ issueth to another base Court, the *Pluries* ought to be returned into the Chancery, or into the same Court where it is made returnable. And if it be returned into the Chancery with the Record, the Chancellor himself with his own Hands may put the Record into the Common Pleas without any Writ of *Mittimus* thereunto, and that as well as if he had sent a *Mittimus* with the Record. (c)

Error

(a) Here *Note*; If the Record be removed for Error, but the Party does not assign his Errors, he who recovers may have a *Scire facias* for Execution; and if he has Execution awarded by Default, yet the other may come and assign Errors in the Parliament, and then have a *Scire facias ad audiend' Errores*. 9 H. 6. 13. See accordant 17 E. 3. 21.

*Note*; A *Scire facias ad audiend' Errores* shall issue against the Tertenant and Heir of him who is Party to the Record; but the Heir is Plaintiff, and by his Death the *Scire facias* shall abate. *Note*; The Plaintiff may Elec't a *Scire facias* against the Heir only, and after Reversal to him, take another *Scire facias* against the Tertenant, *ad audiend' Errores*, or he may take it against both together. 47 Aff. 4.

(b) The Chancellor may send the Record into C. B. 17 E. 3. 21. 5 H. 5. 1. in a *Certiorari*. See 9 H. 6. 4. that Part of a Record may be delivered to the Justices of B. R. by the Chief Justice without a Writ, when the other Part was delivered by Writ.

(c) What Record shall be removed by Writ of Error?

*Note*; If Judgment be given in a Franchise, or inferior Court by a Writ of Error, the Original shall be removed; but if it be given in C. B. the Original shall not be removed without a special Writ (for it's Removal.) 34 Aff. 7. Yet see an Original not removed in Case of Error brought on a Judgment in *Oxon.* in a Writ of Right, for that if the Judgment were reversed, the Party might proceed on the same Original in *Oxon.* or he might pray a Writ

to remove the Original into B. R. and so proceed thereon in B. R. 37 Aff. 5. 17. Fol. 22. See *Danvers's General Abr. Tit. Error.*

Where a Writ of Error shall be a *Superfedeas*, &c. If the Party be in Custody on a *Capias ad Computandum*, he shall not be taken out of it by a Writ of Error. 21 H. 6. 26.

*Note*; 1. If after Judgment Execution be awarded, and Error brought, and then the Party is taken, he is well taken, for a *Superfedeas* ought to have issued (upon the Writ of Error) out of C. B. directed to the Sheriff; for the Writ of Error is no *Superfedeas* as to the Sheriff, but if the Party removes the Record, he may find Sureties, and have a *Superfedeas* (directed to the Sheriff) out of B. R. 20 H. 6. 4. 7 H. 6. 42. 44.

But *Note*; If no Execution be awarded; 1. The Writ of Error is a *Superfedeas* to the Award of Execution; but if the Party be Nonsuit, and brings another Writ of Error, this is no *Superfedeas* to the Award of Execution, nor shall any *Superfedeas* be directed to the Sheriff on this second Writ; and yet if he sends the Record into the King's Bench on this second Writ, he shall have a *Superfedeas* there on Sureties found. 20 H. 6. 4. 19 H. 6. 8. But if the Writ of Error be discontinued by the not coming of the Justices, &c. the second Writ is superseded. 6 H. 7. 16. But if a Judgment be given in a *Quare Impedit*, and the Party sues out of (or on) the Rolls a *Quare non admittit*, and pending this, the other brings a Writ of Error, the Record shall be sent notwithstanding this Writ; and when

the



## Error in London.

**H** NOTE that if any erroneous Judgment be given in the Courts before the Sheriffs of *London*, the Party grieved shall have a Writ of Error out of the Chancery, directed unto the Sheriffs, to bring that Record before the Mayor and Aldermen in the (a) Hustings of *London*, which Hustings is a Court holden before the Mayor, &c. And there the Record shall be examined: And if there be Error, they shall reverse the Record there by the Custom of the said City. And if the Sheriff, after the Record is removed before the Mayor, &c. in the Hustings, will award Execution upon the Record against the Party, the Party against whom the Execution is awarded shall have a special Writ out of the Chancery, directed unto the Sheriffs, that they take sufficient Sureties of the Party to satisfy the King, and also the Party, of that which appertaineth unto them, if the Judgment be affirmed, and that they surcease to do Execution; and if they have taken the Party in Execution, that they deliver him out of Prison. And the Form of the Writ is such:

Nat. Bre. 17. ante 21. A Feme Covert was received in the Common Pleas to acknowledge a deed inrolled, where they have not Power to examine her without a Writ, *Quare* if Error; for it is not adjudged if it be Error or not. *Quare* That a Statute

the Usage at this Day. So of an Infant. 21 E. 3. 29. Br. Error 62. Vid. 32 H. 8. That a Statute nor Deed inrolled shall not be taken by the Common Law of an Infant or Feme Covert. *Contra* by the Custom of *London*, per 29 H. 8. 23. and 7 E. 4. 5. *Lis*.

**I** *Rex Majori & Vic' London. salut'. Ex parte R. &c. nobis est ostensum quod cum secundum Consuetud' in Civitate prædicta, in casu quando aliquis, sive Querens, sive Defendens, queritur, quod in Loquela quæ fuerat in Curia nostra coram Vic' Civitatis prædict' Errores aliqui interven', & record' & process. Loquelarum illarum causa erroris intervenientis venire faceret in Hustingo Civitatis prædict', ad Errores illos corrigendos, Vicecom' Civitatis illius execution' prioris judicii coram eis reddit' faciend' supersed' debeant, pendentibus.*

the Record is sent, the *Quare non admittit* being a Judicial Writ, and all the Proceedings thereon are determined; for by Reversal of the first Judgment, all that which depends thereon is reversed; and the same Law is in a *Scire facias* to reverse a Judgment. See 26 E. 3. 75. and 2 H. 6. 4. See also Stat. 3. *Fac.* 1. c. 8.

A *Scire facias* issued upon a Fine, the Tenant made Default, and at the Day given a Writ of Error was brought on the Fine; no Judgment shall be given on the *Scire facias*, but the Plaintiff may have Debt on a Recovery, altho' the Record be removed by Error, either pending or before the Writ of Debt brought; for the Writ of Error is as a new Original.

On a *Devastavit* on a Judgment in Debt

against Executors, a *Scire facias* issued, and on Issue found for the Plaintiff, the Defendant had a Writ of Error on the Original Recovery; yet Judgment shall be given in the *Scire facias*, that Execution shall be awarded, *sed cesset Executio* until the Record affirmed. 10 H. 6. 6. *per Cur'.*

Note; This *Scire facias* is in Nature of a new Original, as if one recovers in Assize, and after brings a Redisseisin, and afterwards Error is sued of the Judgment given in the Assize; yet the Sheriff shall go to the Judgment in the Redisseisin, because 'tis in Nature of a new Original. See 9 H. 5. 13.

(a) Vide Rot. Parl. 8 E. 2. m. 17. The Case of *Joh. Bonaventure*.

[23.]

dentibus in *Hustingo Recordis* & processibus *Loquelarum* illarum indisscussarum; ac nos nuper ad prosecutionem præf. R. suggerentis *Error* in *Recordo* & processu *Loquelæ*, quæ fuit coram vobis præfat' *Vic' in Curia nostra Civitatis prædictæ* per Breve nostrum, inter A. & prædictum R. de eo quod idem R. &c. intervenisse manifestum, vobis præcipimus quod *Recordum* & processum ejusdem coram vobis in *Hustingo prædicto* venire faceretis ad *Error*em, si quis fuerit, corrigend'; vos nihilominus *Vicecom'* (pendente in *Hustingo prædicto* dicta *Loquela de Errore* indisscussa) executionem prioris judicii fieri faciatis minus juste, in ipsius R. dispendium non modicum & gravamen: Vobis igitur præcipimus, quod si ita sit, quod idem R. invenit vobis sufficientem *Secur'* de *Satisfac'* tam nobis, de eo quod ad nos in hac parte pertinet, quam præfat' A. de *arreragiis* & dampnis sibi in hac parte adjudicatis, si contigerit primum judicium affirmari, & ad faciendum ulterius & recipiend' quod *Curia nostra* consideraverit in hac parte; tunc execut' prioris judicii faciendo supersedeatis, pendente in *Hustingo prædicto* *Loquela de Errore* supradict'. Et si idem R. occasione judicii illius captus sit, & in *prisona nostra* detentus, tunc ipsum R. a *prisona* illa, si occasio prædict', & non alia, detineatur in eadem, per *securitat'* prædict' interim deliberar' faciatis, ut dict' *Loquelam* suam de *Errore* prosequi possit. Teste, &c.

And it appeareth by this Writ, that a Man shall have an Action against any Person in London, by Original out of the Chancery directed unto the Sheriffs of London, and that they shall hold Plea thereof. And a Man shall have the like Writ of Error upon a Judgment given in London before the Sheriffs by Plaint sued there before them, without any Writ original sued, &c. And the Writ of Error shall be directed unto the Mayor, and also to the Sheriffs, although that the Judgment be given in the Sheriffs Court before them, to remove the Record into the *Hustings* to reverse it there, if, &c. And the Form of the Writ shall be thus:

*Rex Majori & Vic' Lond' salutem, &c. Quia in Recordo & processu, ac etiam in redditione judicii Loquelæ quæ fuit in Curia nostra Civitat' prædictæ coram vobis præf. Vicecomitibus sine Brevi nostro, secundum Consuetud' ejusdem Civitatis, inter A. & R. de quadam transgr' eidem A. per præf' R. illata ut dicitur, Error intervenit manifestus, ad grave damnum ipsius R. sicut ex querela sua accepimus; nos Errorem (si quis fuer.) modo debito corrigi, & partibus prædict' plenum & celerem justitiam fieri volentes in hac parte, Vobis præcipimus, quod si judic' inde reddit' sit, tunc Record' & process' Loquelæ prædict' coram vobis in proxim. *Husting' nostro* ejusd' Civitatis venire, eaque in præsentia partium præd' per vos præf' Vicecomites super hoc præmunien', si interesse voluer', recitari, & diligenter examinari, & Errorem (si quis fuerit) in hac parte modo debit' corrig' & partibus prædict' plenam & celerem justic' inde fieri faciatis, ut de jure & secund' Consuetud' Civitatis prædictæ fuerit faciend'. Teste, &c.*

And the Writ of *Supersedeas* unto the Sheriff, to cease to do Execution pendant the Writ of Error, may be made and contained in the same Writ of Error which is directed unto the Mayor and Sheriffs to remove the Record into the *Hustings*.

And



**E** And if Erroneous Judgment be given in the Hustings in London before the Mayor and the Sheriffs there, then the Party who will sue to reverse the Judgment shall come into the Chancery, and there sue a Commission, directed to Persons to examine the Record, and Process, and the Errors, and thereupon to do Right. And the Commission shall be thus :

34 H. 6. 42.  
When Error  
is sued upon  
a Judgment  
before the  
Mayor, it  
shall be at  
S. Martins,  
and then the  
Recorder shall

Mayor and Aldermen shall have forty Days to be advised of their Records, and the Recorder shall record the same *Ore tenus*.

(a) *Rex dilectis, &c. R. & S. salutem. Ex parte B. accepimus, quod in Recordo & processu, ac in redditione iudicii Loquelæ quæ fuit coram Majore & Vic' Lond' in Hustingo nostro ibidem sine brevi nostro, int' C. & præd' B. de quadam transgr', &c. illata, ut dicitur, Error intervenit manifestus : Nos, in defectu eorundem Majoris & Vicecomitum volentes Errorem illum (si quis fuer') debito modo corrigi, & partibus inde fieri Justitiæ complementum, assignamus vos Justic' nostros, una cum iis quos associavim', ad præd' Record' & processum examinand', & Errorem (si quem in eis, aut in redditione iudic. Loquelæ præd' inveniri contigerit) corrigend', & ad plenam & celerem Justic' inde partibus faciend' secundum Consuetud' Civitatis præd'. Et ideo vobis mandamus, quod ad certum diem, quem ad hoc provideritis, usque Sanct' Martin' magnum Lond' accedatis, & in defectu præd' Majoris & Vic' præmissa fac' in forma præd' factur', &c. secundum legem & cons' regni nostri, & Civitatis præd' ; salvis, &c. Mandamus, &c. eisdem Majori & Vic' quod ad certum diem, quem eis sciri fac', Record' & process' Loquelæ præd', cum omnibus ea tangentibus, & partes præd', coram vobis ad locum præd' venire fac'. In cujus, &c. Teste, &c.*

And upon this Commission the Justices shall award a Precept unto the Mayor and Sheriffs, to send the Record and Process before them at a certain Day, and to warn the Parties to be before the Justices at the same Day, &c. And the King shall send another Writ unto the Mayor and Sheriffs, to have the Record and Process before the said Justices at the Day assigned by the Justices by their Precept made unto the Mayor and Sheriffs. And upon this Commission the King may make Association, and another Writ *Si non omnes* directed unto the Justices to proceed, although that some of them do not come, as he shall do in an Assize, or in Oyer and Terminer, &c.

**G** And a Man shall have a Commission to examine the Errors, and Judgment given in the Hustings in the Time of another King, and in the Time of another Mayor, and other Sheriffs ; and the Form of the Commission is such :

*Rex dilectis, &c. Quia ex parte B. accepimus, quod in Recordo & processu, &c. [usque ib. justitiæ complementum] assignavimus vos tres, & duos vestrum Justiciar' nostr', ad Recordum & processum Loquelæ prædict' in præsentia nunc Majoris & Vic' Civitatis præd', per vos super hoc præmunend', si interesse voluerint, ad Ecclesiam sancti Martini magni Lond' supervidend',*  
 &

[ 24. ]

Et examinand', &c. [ut supra usque ib. Civitat' prædict'.] Et ideo vobis mandamus, quod ad certum diem, &c. provideritis, usque dictam Ecclesiam sancti Martini magni London' accedatis, Et præmissa omnia Et singula fac' Et explicet' in forma prædict' factur', &c. Secundum Legem Et Consuetudinem Civitatis prædict'; salvo, &c. Mandamus etiam eidem nunc Majori Et Vicecom', quod ad certum diem quem vos, &c. eis sciri fac' Record' Et processum Loquelæ præd', cum omnibus ea tangentibus quæ penes ipsos resident, ut dicitur coram vobis, &c. ad locum præd' venire fac'; præfatique Vic' quod ipsi scire fac' præf' B. quod tunc sit ibi, Error si quis in Recordo Et processu prædict' &c. ut supra in præmiss', &c. Teste, &c.

And upon this Commission the King shall send another Writ unto the Mayor and Sheriffs of London, to send the Record and Process before the said Justices, &c. And the Writ in the Beginning thereof shall rehearse the Effect of the Record and Process, and also it shall rehearse the Commission which he hath made to be directed unto certain Justices, to examine, &c. and to do Justice thereupon: And then he shall say in the End of the Writ, *Et ideo vobis præcipimus, quod ad certum diem, quem eidem R. F. Et S. vel duo eorum, vobis scire fecerint Record Et process' Loquelæ prædict', cum omnibus ea tangentibus, quæ penes vos resident, ut dicitur, coram eis vel duobus eorum ad locum prædict' venire fac', vosque præfat' Vic' scire fac' præf' A. quod tunc sit ibi, Errorem illum (si quem in Recordo Et process' prædict' aut in redditione judic' Loquelæ prædict' intervenire contigerit) auditur', Et ulterius factur' Et receptur' quod Curia nostra consideraverit in hac parte. Et babeat', &c.*

And if a Man hath Judgment given for him in London before the A Sheriffs in their Courts, or before the Mayor and Sheriffs in the Hustings of London, and the Defendant, to delay the Execution of the Judgment, sueth a Writ of Error to remove the Record before the Mayor, &c. and after the Party Defendant who sued that Writ of Error will by subtil Means convey his Goods out of the City, or otherwise waste them, to the Intent that the Plainant may not have Execution of his Goods; then the Plainant who had Judgment to recover shall have a special Writ directed unto the Mayor and Sheriffs, that they provide that the Goods amounting unto the Value of what is recovered, be safely kept to satisfy the Plaintiff, if the Judgment be affirmed for him; so that Execution may be done of the first Judgment upon the same Goods.

And if Judgment be given before the Sheriffs of London for the B Plaintiff, and the Defendant sueth a Writ of Error, and removeth the same before the Mayor and Sheriffs in the Hustings, and when he hath removed it by a Writ of Error, if he will proceed no further upon the Writ, &c. then the Plainant who recovered shall have a Special Writ unto the Mayor and Sheriffs, that they proceed unto the Examination of the Errors, and to do Execution, if the Judgment, be affirmed. And upon that Writ he shall have an *Alias*, and a *Pluries*, vel *causam nobis significes* in the *Pluries*, if he will not proceed, &c. And this Writ was devised by *Parning* then Lord Chancellor, and by him diligently examined, as it appeareth by the Register.

And



**C** And if False Judgment be given in *Ireland*, the Party may sue a Writ of Error in the King's Bench in *England*; and the Writ shall be such: Ant. 22 E.

*Rex dilect' & fidel' suo A. Justic' suo Hibern', salutem. Quia in Recordo & Process', &c. Error, &c. ad grave dampnum ipsius B. sicut ex gravi querela sua accepimus: Nos, &c. quod Record' & process' Loquel' præd', cum omnibus ea tangentibus nobis sub sigillo vestro distincte & aperte mittatis, & hoc Breve, ita quod ea habeamus tali die, &c. prout inspect' Record' & process' præd', ulterius inde fieri faciamus quod de jure fuerit faciend'. Et scire fac' præf' S. quod tunc sit ibi, ad procedend' in Loquela præd', & ad faciend' & recipiend' quod Curia nostra consideraverit in præmiss'. Teste, &c.*

### Error.

**D** **R**EX dilecto & fideli suo I. de T. salutem. Quia in Recordo & processu ac in redditione judicii Loquelæ quæ fuit coram vobis & sociis vestris judic' nostris de Banco per Breve nostrum, inter A. & B. de Record. & processu Assisæ Novæ disseisinæ, quæ inter eos summ' fuit & capta apud S. coram dilectis & fidelibus nostris I. de I. & sociis suis justic', &c. Assign', de Tenementis in W. quæ quidem Recordum & process. coram vobis certis de causis venire fecimus, Error intervenit manifestus, ad grave dampnum ipsius A. sicut ex querela sua accepimus: Nos Errorem (si quis fuerit) in hac parte modo debito corrigi, & partibus prædict' Justitiam inde fieri volentes, prout decet, Vobis mandamus, quod si (a) judic' inde redd' sit, tunc tam Record' & process. Loquelæ præd' coram vobis sic habit', quam etiam Record' & process. Assisæ præd' coram vobis missa, cum omnibus ea tangent', nobis sub sigill' vestro, &c. ita quod ea habeamus, &c. ut his inspectis, &c.

**E** And this Writ of Error lieth where the Assize passeth in the County before the Justices of Assize, and afterwards it is removed into the Common Pleas, and there is Judgment given: Now the Party may sue this Writ of Error, if there be any Error in the Matter; and upon that he may have an *Alias*, and a *Pluries*, if the Justices will not rectify the Record, &c.

**A** And if the Justices of that Bench, or other Justices upon the Writ of Error will not certify all the Record, then the Party who sueth the

I

Writ

(a) So that if the Teste of a Writ of Error be before the Judgment, 'tis no *Superedeas*. 22 H. 6. 6, 7.

See a Writ of Error returnable in *Chancery*, and the Record sent thence by *Mittimus* into B. R. 50 Aff. 4.

*Note*; Error on a Judgment in Assize does not lie before the Justices of C. B. For they have no Power to write to them. *Dyer* 250. *Per Cur'*.

See *Mag. Charta* chap. 11. *Communia placita non sequantur Curiam nostram sed teneantur in aliquo certo loco*.—Here we may note, That although Common Pleas could not be

held immediately in B. R. yet where there was a Defect (of Power) in the Court where, by Law, they ought to be originally held, they might be held in B. R.

As if a Record be brought (into B. R.) out of the Common Pleas by Writ of Error, there they may hold Plea thereof to the End of the Suit. So if a Plea on a Writ of Right be removed out of the County-Court by *Pone* into B. R. And so it is, if on a Writ of *Meas'n*, *Replevin*, or *Nativo Habendo*, a *Sicut pluries* be awarded returnable in B. R. See 11 H. 4. 49. *per Hankford & Gascoigne*: And see F. N. B. 3. 10 H.

[25.]

Writ of Error may alledge (a) Diminution of the Record, and pray a Writ unto the Justices who certified before the Record, to certify all the Record; and the Writ shall be such:

Rex dilecto & fideli suo W. de T. salut'. Cum (b) Nos nuper ad profe- B  
ctionem I. de H. nobis suggerentis, in Record' & processu, ac etiam in red-  
dictione judicii Loquelæ quæ fuit coram vobis & sociis vestris Judic' nostris de  
Banco per (b) Breve nostrum, inter W. de T. (c) Potentem & I. de R.  
(c) Tenentem, de xv. mesuagiis cum pertinen' in S. Errorem intervenisse ma-  
nifestum, vobis mandaverimus, quod si judic' inde redditum esset, tunc Record'  
& processum Loquelæ præd', cum omnib' ea tangentibus nobis sub sigillo vestro  
distincte & aperte mitteretis, & Breve nostrum quod vobis inde venit, ita  
quod ea haberemus in Crastin' Sancti Martini proxim' præterit', ubicunque tunc  
essemus in Anglia: Ac jam ex parte præd' I. de H. nobis est ostensum, quod  
licet vos prætextu Brevis nostri præd' Record' & processum præd' in aliqua sui  
parte coram nobis ad dictum Crastin' miseritis, aliqua tamen eorund' Record'  
& process. necnon quædam alia ea tangentia adhuc restant coram vobis mit-  
tend', in ipsius I. de H. dampnum non modicum & gravamen: Ideo vobis  
Mandamus, quod si ita est tunc residuum Record' & process. præd', necnon om-  
nia alia ea tangentia, quæ ut præd' est restant coram vobis mittenda nobis sub  
sigillo vestro distincte & aperte mittatis, & hoc Breve; ita quod ea habeamus,  
&c. ut ulterius in præmiss. &c.

Dedimus

(a) 'Tis a general Rule, That after in nullo Erratum pleaded by the Defendant no Diminution can be alledged: So is 1 Cro. Robsert vers. Andrews, Beer and Bee her's Case, Moor 700. and Dayrel and Thynn's Case, 1 Leonard 22. See 7 E. 4. 25. 9 E. 4. 32. 1 Co. 36. 5 Co. 37, &c.

But though such Diminution cannot be alledged, nor a Certiorari granted (after in nullo Erratum, &c.) at the Prayer of the Party upon Record, yet it may be granted on Information given to the Court by any Person (as an Amicus Curie, &c.) of the Defect in the Record: But this is in the Judgment and Discretion of the Court, as was held in Weaver and Felton's Case; entred Hil. 1 Car. 1. Rot. 647. B. R. where the Defendant pleaded an in nullo Erratum, and then alledged Diminution, and prayed a Certiorari, which at first was granted, and the Record certified, &c. But before this was Entred of Record in B. R. the Court were informed thereof, and refused to receive it, because it came in at the Prayer of the Party, which it ought not to do: But upon Information (by one as Amicus Curie) they granted it; and at the same Time they looked into Bishop's Case, 5 Co. 37. b. where though my Lord Cook reports, That after in nullo Erratum pleaded Diminution may be alledged, yet in the Case cited there was no in nullo Erratum pleaded, but Judgment was against the Defendant

by Nihil dicit, and then the Diminution alledged, and the Certiorari granted, at the Prayer of the Party, came Time enough! And note the Reason given in 7 E. 4. 25. by the Judges, Why after in nullo Erratum pleaded, Diminution cannot be alledged; viz. Because it appears by the very Record that all the Parties thereto are agreed, That it is a true and perfect Record, and therefore the Parties themselves shall not be admitted to contradict their own Agreement, appearing in the Record: Yet it seems the Court on Information ut supra, may take Notice of the Diminution, and then Ex Officio are to award a Certiorari ad informandam Conscientiam Curie. Quare.

If a Writ of Error is brought in C. B. of a Judgment in an inferior Court, and the Judgment is there affirmed, and then a Writ of Error is brought in B. R. on the Judgment so affirmed; in that Case no Diminution can be alledged of the Record in the inferior Court: For now the Judgment in C. B. is only in Question. So Resolved Pas. 20 Jac. 1. B. R. Bannister and Kennedy's Case.

(b) But if the Writ of Error, &c. were in the Time of another King, then the Form of this Writ is otherwise. Dyer 105.

(c) It is sufficient to name them so, without saying Filius & Heres, or Assignatus. Yet Error was brought on a Recovery in Covenant against one and his Assignee. Dyer 356.



*Dedimus potestatem de Attornato faciendo.*

**C** IT seemeth that before the Statutes which gave Power unto a Man to make an Attorney, the Justices would not suffer that the Plaintiff, or the Defendant, or the Demandant, or the Tenant, should make Attorney in any Action, Suit, or Bill, in any Court of Record, nor in any other Court which was not a Court of Record, because the Words of the Writ do command the Defendant for to appear, &c. and that was always taken to be in proper Person. Post. 156.

The Form of Entry in every Action for the Plaintiff, or Demandant, is; *Et præd' Quer' obtulit se iiii. die, &c. & prædict' Def' non venit; ideo præceptum est Vic', quod, &c.* by which it is taken, that the Plaintiff was to appear in proper Person. But now by the Statutes he may make Attorney in a Court-Baron, or other Courts; and may make Attorney for Suit Personal at the Hundred, or other Court-Baron; but for Suit Real at the Leet, or at the Sheriff's Torn, he cannot do it by Attorney, but he ought to do the same in proper Person. But it seemeth that the King by his Prerogative, and before the Statutes, might give Warrant unto a Man to make Attorney in every Action or Suit, and that as well unto the Demandant, or Tenant, as unto the Plaintiff or Defendant; and that he may direct his Writs, or Letters, unto the Judges of Courts, commanding them to admit and receive such Persons by their Attorney, and that the Judges are bound to do the same. And it seemeth one Cause is, because it shall (a) not be Error, if the Judge do admit any (b) Plaintiff, or (b) Defendant to make Attorney in any Suit or Action, in which by the Law he ought not to make Attorney: *Quod vide* in Title *Error*, *H. 36 E. 3.* and Title *Attorney T. 37 H. 6.* W. 2. c. 11. Br. Attorn. 1. 84.

**D** And if Tenant for Life be impleaded in a *Præcipe quod reddat*, he in the Reversion may pray to be received to defend his Right upon the Default of the Tenant, or upon his faint Pleading, and there he cannot pray to be received by his Attorney. But if he bring a Writ unto the Justices out of the Chancery, testifying that he hath made Attorney there, and rehearse the Cause whereof, that is to say because (c) he is sick, or other reasonable Cause, and commanding them to receive such Person by Attorney for him in the Reversion; the Court ought and is bound 37 H. 6. 27. Br. Attorn. 1. 81. 25 H. 7. 9. Post. 27. D.

I 2

(a) Vid. ante 22. D. 8 Co. 50. b. 11 H. 4. 19. 22 H. 6. 13. 24 E. 3. 25.

(b) Where he may appear in Person. See 36 E. 3. F. Error 86. 37 H. 6. 27. But to admit one who is within Age to appear by Attorney, is Error. 22 H. 6. 31. 1 H. 5. 6. Dyer 262.

(c) See 18 E. 3. 47. in the Case of the Earl of Gloucester, who being sick, &c. his Attorney found Sureties for Issues, &c. because the Warrant was *ad faciend' quicquid prædict' Comes faceret si præsens esset.* See 4 H.

4. 1. 13 H. 6. 28. And so it is of a Recluse or Feme-Couvert.

But if the Writ be *ad recipiend' Attorn', ad defendend', &c. Si contingeret* that the Baron makes Default at such a Day. If in Case the Baron does not make Default, but appears, and renders, and afterwards she makes Default, &c. she shall not be received by Attorney, but ought to have her general Writ. 9 H. 6. 37.

Note; There are three Cases of *Resceit*, viz. 1. *Quia Pragmans.* 2. *Quia Recluse.* 3. *Quia*

Plow. 76. bound to receive him by his Attorney. And it is not material whether  
 Post. 27. B. the Cause put in the Writ be true or not, for it is not traversable, &c.  
 Aliter 27 H. 8. And the King by his Letters Patent may licence a Man to make a ge- E  
 Br. Attor- neral Attorney *in omnibus placitis motis & movendis, & in quibuscunque*  
 ney 84. Cur': And by his Letters Patent he may express who shall be Attorney,  
 &c. or may grant to make Attorney whom or who he will, without nam-  
 ing any Attorney by his special Name.

And the King by his Writ may send to any Person to receive Attor-  
 ney for another, such Person generally as the other will name, or such  
 Persons specially; and that may be as well for the Demandant or Plain-  
 tiff, as for the Defendant or Tenant.

Register 9. And the King may give Authority unto one Person to receive Attor-  
 Br. Attor- ney for another in all Pleas, and in all Courts, for two or three Years.  
 ney 84. that And the King may grant a *Dedimus potestatem* to receive Attorney for  
 is intended another, for a special Cause recited in the Writ, because he is languish-  
 of the King's ing, or lame, or decrepit, &c. or such other like special Cause. Or he may  
 Court; for it grant a *Dedimus potestatem* in the Generalty to receive Attorney for another  
 doth not ex- in all Pleas, without expressing any Cause in certain wherefore he doth so.

And also it appeareth by the Register, that the King by his Letters P  
 Patent may grant unto the Prior of St. *John's of Jerusalem*, that he may  
 make two of his Friars, and name them, &c. in his Place, which is in  
 the Place of a Proctor; that the two Friars shall make Attorney for the  
 Prior in every Action which is pendant, or to be brought against him in any  
 Court, &c. and for to challenge his Liberties, and for to defend them.

Vide 32 H. 6.  
22.

[26.]

And also the King by his Letters Patent may grant unto an Abbot, A  
 for the Devotion that he oweth to the House, that he may make a Ge-  
 neral Attorney for all Pleas, and in all Courts; and the said Abbot may  
 remove him and put others in his Room, as often as it shall seem good  
 and needful for him so to do: And so by this it doth appear, that the  
 King may grant unto all his Subjects to make Attornies in the same  
 Manner, without putting or shewing any Cause in the Letters Patent.

And

*Quia in periculo mortis.* And that the Writ  
 being, *Accepimus, &c. & legale Testimonium*  
*testatur quod Uxor, &c. ita infirmatur, &c.* is  
 good. 19 H. 6. 46. a. b.

Note; When an Attorney is made, he  
 continues so always pending the Plea. If  
 the Tenant makes an Attorney in C. B. and  
 afterward Conusance is granted, he shall be  
 Attorney for the Tenant in the Franchise  
 also; and therefore the Tenant cannot be  
 essoined. Adjudged, because he had an At-  
 torney to remove, &c. So an Attorney in  
 C. B. is also Attorney at the *Nisi prius*. So  
 an Attorney made at first by the Tenant  
 shall be Attorney in C. B. after the Plea re-  
 summoned; and yet in none of these Cases  
 is the Attorney bound to travel, &c. And  
 expressly by *Banks*, If the Tenant appear  
 by Attorney in C. B. and Judgment is given  
 against the Defendant on an erroneous Pro-  
 cess, and then the Record is removed by  
 Error into B. R. and the Errors redressed,

so that they are to plead again upon the O-  
 riginal, the Attorney made by Warrant in  
 C. B. shall serve also in B. R. 21 Aff. 17.

And note; When Judgment is given against  
 the Tenant, after the Judgment the War-  
 rant of his Attorney is determined: But the  
 Demandant's Warrant of Attorney is not ex-  
 pired by the Judgment; for he may sue  
 Execution within the Year; but after the  
 Year he cannot sue out Execution without  
 a new Warrant. See 8 E. 3. pl. penult. 33  
 H. 6. 44. a. 34 H. 6. 51. a. b. A Warrant  
 of Attorney against the Tenant or De-  
 fendant shall serve against the Vouchee or  
 Garnishee. But by *Rikell*, not for him who  
 interpleads with another in a Writ of Ward;  
*quod Brian concessit.* 7 H. 4. 3. pl. 9. adjudged  
 8 H. 4. 9. b. And therefore in the Case of  
 Interpleader it must be said expressly, That  
 he is Attorney to cause his Master to ap-  
 pear, &c.



**B** And it appeareth by the Register, that the King may grant the same as well by Letters Patent under his Privy Seal, as by Letters Patent under his Great Seal.

And when the King makes a general Grant unto an Abbot, or unto any other, to make such general Attornies, then it seems the Abbot shall come into the Chancery, or shall send his Deed under his Seal unto the Chancellor, witnessing that he hath made such and such Person his Attornies, &c. And thereupon the Chancellor shall make Letters Patent unto the Abbot, testifying that he hath made such and such Persons his Attornies in all Pleas and Courts; and upon these Letters Patent shewed unto the Court, the Judge ought to admit and receive those Persons for Attornies for the Party; and these Letters Patent shall be entered upon Record in the Chancery.

**C** And the King may send his Writ unto the Justices of the Common Pleas, or unto the Justices in Eyre, or other Justices whatsoever, testifying that such a one hath made his general Attorney in all Pleas and Quarrels moved against him or by him, and also to challenge his Franchises, or to defend his Franchises, commanding the Justices by the Writ that they receive him for Attorney, &c.

There is another Writ also in the Register, That the King by his Writ shall command his Justices in Eyre, that they admit and receive the Claim of such a one to certain Liberties, which he shall make and claim before them by his Attorney, because himself cannot be personally before them at the Day.

**D** There is another Form of Writ to the Justices, that they admit such a one by his Attorney, whom the said Party shall make his Attorney by Letters Patent under his Seal.

(a) And a Man may make his Attorney before the Justices, without making an Attorney in Chancery, or without suing any Writ unto the Justices, commanding them to admit any Attorney for the Party, Plaintiff or Defendant; as the common Course is at this Day for an Attorney for every Party to appear in every Manner of Action, that they can appear by Attorney, and (b) put in their Warrants without any such Writs, if not, that they be in Writs of Entry in the *Post*, or Writ which is by Covin between the Parties, or a Writ of Right: Then the Justices in Discretion do not admit any Man to appear as Attorney for the Party Defendant, unless the Defendant do before some Justice confess him to be his Attorney, and that the Justices do record the Warrant, or otherwise that he bring a Writ out of the Chancery, testifying that he hath there made Attorney, commanding them to receive him for his Attorney. But

(a) *Note*; An Infant shall not be admitted to be Attorney. 1 H. 5. 6.

(b) If one appears by an Attorney who has no Warrant of Record, yet if he was admitted before by a Justice, and is afterwards entered, 'tis good. 4 E. 4. 13. a. b. So if one is accepted by the Court to be Attorney before his Appearance. 41 E. 3. 1, 2. and see 44 E. 3. 45. b. where one was admitted conditionally by the Judge, viz.

if his Master would assent, and after the Appearance the Master assented, &c. 7 H. 4. 4. held good; and see 11 H. 6. 42.

The Justices of C. B. may record a Warrant of Attorney taken before a Judge of B. R. notwithstanding the Statute.

A Warrant of Attorney must be recorded before Judgment. See now the Statute 4, 5 *Anna* for Amendment of the Law.

- 22 E. 4. 2. But there are divers Cases in which the Justices will not admit the Defendant by Attorney; as if he came in by *Cepi Corpus* (a), they will not admit him by Attorney until he hath pleaded some Plea, and then in Discretion they use to suffer the Defendant to make Attorney. But if the Defendant come by *Cepi Corpus* upon the Exigent, the Justices will not admit him to make Attorney, but give him Day by Bail from Term to Term until the Matter be determined; and that seems to be at their Discretion for his Contumacy; for in that Case if they do admit him to make Attorney, and to go without Bail, it is no Error; as it seemeth unto me.
- 3 H. 4. 5. (b) At the *Grand* or *Petit Cape* returned, the Tenant may appear by Attorney, and tender to wage his Law, and take Day to wage the same; at which Day he ought to appear and make his Law. See 7 H. 4. 3.
- 29 H. 6. 43. And a Man shall not make an Attorney against the King in any Action sued by the King. 9 E. 4. 4. 22. Aff. 72.
- 42 E. 3. 31. Upon a Rescous returned by the Sheriff, and an Attachment awarded upon it against him, the Defendant shall not make Attorney; but upon his Appearance shall be presently committed unto the Fleet. But if the King send a Privy Seal unto them, commanding them that they admit Attorney for him, the Court ought to receive the Attorney without Appearance in proper Person.
- 47 E. 3. 21. And a Man shall sue a Writ of Error by Attorney if he be not in Ward.
- 21 E. 4. 77. In an Appeal the Plaintiff shall make Attorney against the Abettors, if he sue against them a *Distringas*, &c. even after Issue joined. 40 Aff. 17.
- 8 H. 6. 29. In a *Quem redditum reddit* the Defendant shall not make Attorney but with Assent of the Parties (c).
- 3 H. 4. 4. 6. Con. In a *Quid juris clamat*, or *Per quæ servitia*, after a Plea pleaded the Defendant shall make Attorney. It seemeth likewise in a *Quem redditum reddit*. 7 H. 4. 2. 44 E. 3. 34.
- 33 H. 6. 28. In a *Præmunire* the Defendant shall not make Attorney without a special Writ directed to the Justices.
- Vid. 9 E. 4. 36. After a *Capias ad computandum* awarded, the Defendant shall not make Attorney.
- ante 25. (d) A Man may demand Conusance of Pleas by Attorney.
- 2 H. 4. 23. (d) The Plaintiff after Appearance shall make Attorney in an Appeal by the Statute of H. 7.
- 3 H. 4. 2. O
- 41 E. 3. 29. P
- 1 H. 7. 25.
- 37 H. 6. 27. ac.
- 37 H. 6. 27. ac.
- 5 H. 7. 3.
- 5 E. 4. 6.
- 8 E. 4. 3.
- 5 H. 7. 7.
- One cannot assign Errors by Attorney.
- 1 H. 7. 27.
- 7 H. 4. 2.
- 32 H. 6. 22.
- 39 E. 3. 26.
- after 147. a.
- 21 E. 3. 48.
- Hill. Br. Attorney 36.
- 15 H. 7. 6.
- 9 E. 4. 2. ac.
- 32 H. 6. 22.
- 9 H. 7. 11.
- 3 H. 7. c. 1.
- Rastal.
- Murder 2.

(a) He

(a) Trespass was brought against A. and B. the Defendant comes in by *Cepi Corpus*, where in the *Capias* the Words (*de Banco*) were omitted. And yet because the Roll was right he could not make an Attorney. 8 H. 5. 2.

(b) The Mesne shall not join in Aid with the Tenant in Replevin by Attorney: But the Lessor by Process may join by Attorney with the Lessee Plaintiff in Replevin. 4 E. 3. E. Joinder in Aid 16, 17. 1 H. 4. 28.

(c) See Dyer 135. b. A *Dedimus potestatem* to Justice Saunders to resort to the Defendant in a *Quid juris clamat* to receive an Attorney to plead, &c. (so to receive an Attornment) *propter impotentiam & Senectutem*.

Note; The Matter and Substance of the Plea is contained in the Writ. See 48 E. 3. 57. 7 H. 4. 2. 1 H. 7. 27. 6 H. 7. 10.

(d) See 15 H. 7. 9. 9 E. 4. 2. 40 Aff. 17. 21 E. 4. 73. 8 E. 4. 313. Bro. Attorn. 91.



- A** (a) He who pleads *Misnosmer* shall not make Attorney; *quod vide P.* [27.]  
 41 E. 3. & M. 45 E. 3. *Fitz. Attorney* 52. 27 H. 8. 11.  
**B** In a *Scire facias* upon a Charter of Pardon, the Plaintiff in the *Scire facias* shall not make Attorney; but with the Assent of the other Party he may. 2 R. 3. 9.  
 41 E. 3. *Attorney* 50. 2 R. 3. 9.  
**C** (b) A Feme Covert may be Attorney for her Husband. Perkins 41.  
**D** (c) At the *Sequatur sub suo periculo*, the Vouchee shall not enter into the Warranty by Attorney. 11 H. 4. 28.  
**E** In *Attain* the Petit Jury shall make no Attorney. Newton ac.  
**F** The Defendant shall not make an Attorney in *Maibem*. 10 E. 3. 2. 21 H. 7. 39.  
**G** An Idiot shall not be received to sue or defend in any Action by Guardian, or by *prochein amy*, but ought to be always in proper Person. P. 33. cont.  
 H. 6. f. 20. 12 E. 2. *Bro. Guardian* 26. 21 E. 4. 73.  
**H** (d) An Infant shall sue by *prochein amy*; but if the Infant be Defendant in any Action, he shall make his Defence by Guardian, and not by *prochein amy*. And the Court shall assign the Guardian for the Infant Defendant, and that is commonly one of the Officers of the Court. 33 H. 6. 18.  
 40 E. 3. f. 16. 29 Aff. 67.  
 An Infant sued a Writ of *Waste* against his Guardian, and made Attorney in that Action. 48 E. 3. 10. 13 E. 3. *Bro. Guardian* 24. Aff. 273.  
 An Infant was received to sue an Action of *Debt* by his Guardian. 3 H. 6. 17.  
 16 H. 7. 5. Markham.  
**I** (e) And a Man shall not answer as Guardian unto an Infant who is Plaintiff or Defendant without a Warrant; but as *prochein amy* to an Infant he shall sue an Action without a Warrant. 34 H. 6. 32.  
**K** The Infant shall not remove his Guardian, nor disavow an Action sued for him by *prochein amy*. Anno 43 E. 3. *Lib. Ass.* & Anno 27 E. 3. *Lib. Ass.* 53. It ought to be  
 sued in proper Person by one of full Age.  
**L** And the King by his Letters Patent may make a general Guardian for an Infant to answer for him in all Actions or Suits brought or to be brought in all Manner of Courts. Or may make two or three Guardians jointly and severally to answer for him, or to bring any Action for him; and at the Request of the Infant may grant by the said Letters Patents, that the same Guardians may make other Guardians jointly or severally in their Places, to sue or defend for the same Infant in all Actions and Suits which are brought or sued, or shall be brought or sued after. 34 Aff. 5. ac.  
**M** And the Infant shall have a Writ in the Chancery for to remove his Guardian directed unto the Justices, and for to receive another, &c. and the Court at their Discretion may remove the Guardian, and appoint another Guardian.

And

(a) Not he who acknowledges himself a Villein. 21 E. 3. 10. a. But otherwise, if his Plea of Villeinage be in Bar. 29 E. 3. 41. a. b. *Kelw.* 135.

(b) *Bro. Attorney* 91.

(c) See 11 H. 4. 28. That he shall not do it *gratis* at the first Day of Vouching.

(d) 40 E. 3. 16. *West.* 2. c. 15. 27 H. 8. 11. 3 H. 6. 16. 1 H. 5. 6. 29 Aff. 67. 27 Aff. 53. *Quare* 2 Cro. 641.

(e) 19 Aff. pl. 103. 4 Aff. pl. 5. 33 Aff. pl. 3. 34 Aff. pl. 5. 33 E. 3. *F. Guardian* pl. 25.

3 H. 6. 16.  
An Infant  
appeared by  
Guardian,  
although it  
be in a per-  
sonal Action;  
but *Quare* if  
he can sue  
personal Ac-  
tion by *Pro-*  
*chein any.*  
8 H. 6. 8.  
Ashton.

3 H. 4. 18.  
Feme pro-  
ceeded to be  
received and  
plead, which  
was not by  
Attorney.  
21 H. 6. 48.  
cont.  
before 25. c.

Ante 25. D.

Ante 25. D.  
3 H. 4. 28.

And see in the Register after the Writ of *Protection cum clausula Nolu-* N  
*mus*, Writs directed unto the Bailiffs of Hundreds to receive and admit  
such Persons by Attorney in Court, which the Party will make under  
his Seal, or otherwise: And also Writs of *Dedimus* (a) *potestatem* to re-  
move Attornies made, and to put others in their Places, or to remove  
any of the Attornies, and to put another in his Place. And if a Man  
make Attornies in Chancery to answer and defend in other Courts, he O  
may come in Chancery and remove him, and make others his Attornies:  
And thereupon he shall have a Writ unto the Justices of the Court  
where the Attorney is, testifying that he hath removed him, and made  
another his Attorney, commanding them for to receive him, &c.

There is a *Dedimus potestatem* granted in the Register to receive an p  
Attorney for him who is Vouchee, because he is received for the Default  
of Tenant for Life: And a Writ directed unto the Justices to receive an  
Attorney for a Woman, who prayeth to be received for the Default of  
her Husband, before she be received. And another Writ unto the Ju- Q  
stices, to receive Attorney for one Defendant, and Guardian for another  
Defendant.

In *Quale jus* awarded, where a *Scire facias* shall be awarded against R  
the Lords mediate and immediate, they shall have a Writ directed to  
other Persons to receive Attorney for them to appear to this *Quale jus*  
to defend their Right; and upon Certificate thereof in the Chancery, he  
shall have a Writ to the Justices before whom the *Quale jus* is to be  
tried, to admit him who is received Attorney, and so returned in the  
Chancery, for Attorney for the Lords in that Action.

In Detinue or Ward, where shall be Interpleading, they ought to ap- S  
pear in proper Person and interplead, &c. And yet upon reasonable  
Cause he may make Attorney in the Chancery, and shall have a Writ  
unto the Justices to receive him for his Attorney, and rehearse the  
Cause wherefore; yet it seemeth it is not material whether the Cause  
be true or no.

Also there is another Writ in the Register directed unto the Justices T  
for him in the Reversion, where Tenant for Life is impleaded, com-  
manding them for to admit Attorney for him in the Reversion, if the  
Tenant for Life make Default, as he conceiveth he will, and testify in  
the same Writ, that he in the Reversion hath made such and such his  
Attornies jointly and severally, commanding the Justices to receive them  
for Attornies, because that he in the Reversion hath such an Infirmary  
that he cannot pray to be received, in proper Person. And the like Writ  
for a Feme Covert, who hath a Reversion, and the Tenant for Life is  
impleaded, and she conceiveth that her Husband will not pray to be re-  
ceived

2

(a) See 21 E. 3. 12. In a Writ of Ward brought by Baron and Feme, the Feme by Writ removed her Attorney, and held good. *Quare*, if she may disavow her Attorney. 33 H. 6. 31. And note; If an Attorney appears for one, he may before any Plea pleaded come in and disavow his Attorney,

and the Appearance of the Attorney shall be held null and void: But after Plea pleaded by one as Attorney, he cannot come in and disavow his Plea; but as to that is put to his Writ of Disceit; yet he may remove the Attorney (by Writ). 8 H. 6. 8. See 17 E. 3. 12.



ceived, &c. But in the Writ it shall be mentioned that the Feme is decrepit, or hath some other Infirmitie, that she cannot conveniently come to be received in proper Person. 19 H. 6. 46.

V There is another Manner of Writ for the Sheriff, or for the Escheator, to cause the Barons of the Exchequer to admit Attornies for them to make their Proffers in the Exchequer; and yet they are commonly bound in Recognizance to do the same in proper Person. And the Writ is such:

A *Rex Thesaurario & Baronibus suis de Scacc' salut'. Quia dilectus nobis B. Vic' noster Suff. circa præd' ardua negotia nostra, de quibus ipsum specialit' oneravimus, in tantum est intendens, quod coram vobis ad Scaccar' nostrum ad instans Crastin' S. Mich', vel ad instans Oct. Pasc. proxim' futur', ad Proffrum suum tunc ibidem, prout moris est, personalit' interesse non potest; Vobis mandamus, quod R. & I. Cleric', quos idem Vic' ad Proffrum suum præd' coram vobis ad dictum Crastin' faciend' coram nobis in Canc' nostra loco suo attornavit, vel alterum ipsorum, si ambo interesse non possint, loco ipsius Vic' ad hæc recipiat' hac vic' de gratia nostra speciali, ipsum Vic' propter abs' suam ad diem illum, vel ad Oct. præd', non molestant', in aliquo, seu gravant'. Teste, &c.* [28.]

And the Escheator may have the like Writ for his Proffers to make Attorney. But it seemeth this is not a Writ of Course, but upon a special Commandment directed unto the Chancellor by the King to make such Writ, &c. And the King may send a Writ unto the Treasurer and Barons of the Exchequer, to respite the Account of the Sheriff, and of the Escheator; and the Writ shall be such:

*Rex Thesaur' & Baron', &c. salut'. Quia dilectus nobis W. de H. Vic' noster Wiltes', circa quedam, &c. ut supra, est intendens, quod coram vobis ad Scaccar' nostrum ad instans Crastin' S. Mich' proxim' futur', ad Computum suum de exitibus Com' præd', venire non potest; dedimus ei respect' de Computo suo præd' reddendo usque ad Octab' S. Hilar' proxim' futur': Et ideo vobis mandamus, quod ipsum Vic' respectum illum interim habere permitatis. Teste, &c.*

## *Protection.*

B *Protections* are in divers Forms, and of divers Effects, and the King may grant them for divers Causes. And there are four Manners of Protections with the Clause *Volumus*. One is a Protection called, *Quia profecturus*. And another Protection, *Quia moratur*. And the third is a Protection which the King by his Prerogative may grant; and the same is where a Man is Debtor unto the K. the K. may grant unto him that he shall not be sued nor attached, but taketh him into Protection until he hath paid the King his Debt. But now by the Statute of 25 E. 3. 19. it is ordered, That the Creditor shall have an Action against the King's Debtor, and shall have Judgment against him notwithstanding such Protections. But he shall not have Execution against the King's Debtor who hath such Protection, unless he take upon him to pay the Debts which the King's

V. 27 E. 3. 88.  
39 H. 3. 8. &  
Stat. Prærog.  
Regis 25 E.  
3. c. 19.

K

Debtor

Debtor owed unto the King; and then he shall have Judgment and Execution against the King's Debt, or for both Debts, &c.

Quare. Co.  
Calvin's Case  
88.

There is another Protection *cum clausula volumus*: And that is when C the King fendeth a Man in his Service into the Wars beyond the Seas, or into the Marches of Scotland, and there he is detained and kept Prisoner; he shall have a special Protection reciting the whole Matter; and in the End of the same Protection shall be such Clause: *Præsentibus minime valituris post deliberation' præd' R. a pris. præd', si conting' ipsum iterum liberari ab eadem.* And the Form of divers of these Protections doth appear in the Register. But as the Law is now, every Protection cast shall not be allowed: For if the Protection be to endure for two or three Years, the Justices will not allow the same; and therefore the Form of the Protection at this Day is to endure for one Year and a Day after the Date thereof, and then to sue forth a new Protection if need be. And a Protection may be cast for the Party by a Stranger as well E as by the Party himself.

39 H. 6. 38.  
39.

And Protection *Quia profecturus* shall not be allowed if it be presented F hanging the Plea, if he be not in a Voyage Royal; and a Voyage Royal is, where the King goeth to the War, or his Lieutenant, or his Deputy-Lieutenant, and not otherwise.

And the Plaintiff cannot cast a Protection, (a) for the Protection is G always for the Defendant, and shall be cast for him; if it be not in special Cases, where the Plaintiff becometh Defendant. But when a Protection shall be allowed, and when not, appeareth more plainly in the Title of *Protection* in the great Abridgment of the Years, and therefore it is not needful to shew it here.

38 E. 3. 1.

And by the Register a Man shall be by Protection when he stayeth H *super salva custodia West-marchiæ Angl. versus Scotiam.* Yet Anno 22 E. 4. such Protection was disallowed. But I am of Opinion with the Register.

A Protection *Quia moratur* upon the Sea was disallowed, Trin. 36 H. 6. I because that the Sea cannot stay, and by Consequence he cannot stay upon the Sea.

And a Protection shall be allowed in a Court of ancient Demesne, or K in other Court of Record, as London, &c. And when the Plea is removed, the

(a) Nor may the Plaintiff in *Replevin* after *Avowry*. 20 R. 2. F. *Protection* 106. 5 H. 5. 5. 24 E. 3. 26. contr. 17 E. 3. 24. a. per *Shard*. Nor for the Defendant therein after an *Avowry* by him. 38 E. 3. 1. a. *Finchden*. 25 E. 3. 43. Nor the Plaintiff in an *Audita Quærela*. 47 E. 3. 5. b. Nor the Defendant therein. 13 E. 3. F. *Protection* 71. But this is intended when the Estate is to be executed, and not when it is already executed, and the Suit is to have Execution: For it seems there, if it so appear by the Writ, the Protection is allowable at the *Venire facias*. 47 E. 3. 3, 4. In a *Scire facias* on a

Charter of Pardon against the Plaintiff, after the Plaintiff has counted, a Protection lies for the Defendant; but not before. 43 E. 3. 36.

In a *Quod ei de forceat*, after the Tenant has made Title, a Protection does not lie for him. 38 E. 3. 2. but it does before. 43 E. 3. 6. But after Title so made for the Tenant, it lies for the Plaintiff. 20 R. 2. *Protection* 106. 5 H. 5. 5.

It lies for the Garnishee at the Day of the Return of the *Scire facias*: But not after he has made Title. 3 H. 6. 18. 9 H. 6. 36.



the Protection may be allowed: (a) And a Protection allowed for one Defendant doth put the Plea without Day for all the rest; if not that it be in special Cases, as in Trespass, where they plead several Pleas, and he shall sue several *Venire facias* upon the Issue joined against them, &c.

7 H. 6. 21.  
contr. if they  
plead; vide.  
Plea in Tres.  
15 E. 4. 27.  
4 H. 4. 4.  
3 H. 4. 5.

And a Protection shall be sometimes disallowed for Variance betwixt the Writ and the Protection: But see that in the Title *Protection* in the Abridgments.

L (b) Protection shall be allowed for an Infant; but there are divers Opinions amongst the Justices, if it shall be allowed for a Feme-Covert.

M And how a Protection shall be made void, see Title *Protection*, and in the Title *Repeal* in the Abridgments. [29.]

A There is another Manner of Protection, *cum clausula Nolumus*, as appeareth in the Register: And that is, where an Abbot, or a Prior, or other Spiritual Person be in Fear, or Doubt, that his Goods, or Chattels, or his Cattle shall be taken by the King's Officers for the King's Service; they may purchase this Manner of Protection *cum clausula Nolumus*.

B And by the Register appeareth, that the King may grant unto a Secular Man this Writ as well as unto a Spiritual Man; and if he do so, the same is good, &c.

C And a Man may excuse his Default at the Grand Cape, or Petty Cape, by casting of a Protection.

And if a Man be effoined of the King's Service, the Plaintiff may have a Special Writ directed unto the Justices to disallow of the Effoin, if he be not in the King's Service, commanding them for to proceed, &c.

D And it appeareth by the Register, f. 280. that there are divers Manners of Forms of Protections: Where a Man feareth to travel the Country with his Merchandises, or to collect the Alms for the Poor of an Hospital, or of the Church, then they may purchase Letters Patent of the King's Protection, commanding the King's Subjects for to defend them, and to maintain, aid, and assist them: And the Form is such:

E *Rex omnibus Ballivis & fidelibus suis ad quos, &c. salut'. Supplic' nobis A. ut cum ipse diversa negotia sua in diversis Cur' nostris, & alibi infra regnum nostr' Angliæ prosequit' ac idem A. occasione prosecutionis hujusmodi timeat tam sibi quam hominibus & servien' suis in personis & rebus suis, per quosdam æmulos suos, & eorum procuracion', dampn'; or thus, dampn' de corpore suo & jacturam de bonis suis de facili, &c. & periculum de facili posse evenire, volumus securitati suæ in hac parte prospicere gratiose; Nos pacem & tranquillitatem ubicunque in regno nostro conservare volentes, suscipimus ipsum A. & negotia sua præd' in dictis Cur' nostris, & alibi infra regnum nostrum Angliæ prosequend' ibidem morando, & exinde ad propria redeund', necnon homines & servien' suos, ac res & bona sua quæcunque in protection' & defension' nostras speciales: Et ideo vobis mandamus, quod ipsum A. dicta ne-*

K 2

gotia

(a) In a *Præcipe* against Two, or if two Tenants by Warranty are, and they vouch or plead to Issue, and one of them makes Default, yet a Protection lies for the one or the other; and at the Day of the *Petit Cape* the Parol shall not be put without Day against the other. 5 H. 5. 7. Yet 11 H. 4. 7.

adjudged *contr.* if it was at the *Grand Cape*, or before Default by him made. 13 E. 3. Protection 70. 19 E. 2. Protection 77.

(b) See *Co. Lit.* 130. a. That a Protection lies for a Feme *quia Nutrix, Lotrix* or *Obstetrix*.

gotia sua in Cur' nostris, & alibi infra regnum nostrum præd' (ut præmittitur) prosequendo, ibidem morando, & exinde ad propria redeund', necnon homines & servien' suos, ac res & bona sua quæcunque, manuteneatis, proteg', & defendatis, non inferentes eis, seu quantum in vobis est, ab aliis inferr' permittentes injuriam, molestiam, dampnum, violentiam, impedimentum aliquod, seu gravamen. Et si quod eis forisfactum seu injuriat' fuerit, id eis sine dilatione fac' emendar' : Dum tamen idem A. quicquam quod in nostri seu populi nostri præjudicium, aut contra Ordination' per Dominum E. nuper Regem Angliæ avum nostrum, & Consil' suum nuper inde fact', enervation' cedere poterit, non prosequat', aut attemptet, vel attemptare seu prosequi præsumat ullo modo. In cujus rei testimonium, &c.

And these Letters may be made and directed to Sheriffs, Admirals, F Mayors, and all other Officers, &c. And thereby it appeareth that they ought to see and provide, that such Persons who have purchased such Letters, have by Reason of such Letters Favour and Right done unto them, because it appeareth the King's Will so to be, &c. And there is the like Protection for those who go with Pardons, or to make Collection for Bridges or Highways; and the like for Spiritual Persons; and the like Protection for Merchants Strangers, which go into the Country to gather their Debts; or to sue for them, &c. There is another Form of Protection which is such :

(a) *Rex universis & singulis, Vic', Escaet', Majoribus, Ballivis, Ministris, G ac omnibus fidelibus ligeis nostris quibuscunque, tam Communibus Vill' nostræ de Southwark, quam aliis infra Libertates & extra, præsentis Literas nostras visuris vel audituris, salutem. Sciatis, quod suscepimus in protecl' nostram specialem T. W. ac homines & servien' suos, maneria, terras, & tenementa, bona & possessiones suas in London, Southwark, Hatham, & H. in Com' Surr', ac in S. C. & D. in Com' K. existent', necnon hæc scripta & munimenta sua quæcunque. Et ideo vobis mandamus, quod ipsum T. W. ac homines servientes, maneria, terras, tenementa, bona, possessiones, literas, scripta, & munimenta præd' manuten', protegatis, & defendatis, non inferentes eis, aut eorum alicui inferr' permittentes injur', molestiam, dampnum, violentiam, vastum, destruct', seu domorum vel aliorum bonorum & catall' suor' incendium, seu aliud impediment' aliquod vel gravamen: Et hæc in fide, dilectione & ligeantia quibus nobis tenemini, sub gravi forisfact' nostra, nullatenus omittatis, nec aliquis vestrum omittat'. In cujus, &c. per unum ann. dur'. Teste, &c.*

And another Protection for the Prior of St. John's, and for his Priory, &c. And those are of divers Forms, as appeareth in the Title of Protection in the Register, and therefore see them there. But these Protections are by the King granted of Grace; for every Man who is a loyal Subject is in the King's Protection; but these Protections are granted to move and excite the King's Subjects to aid and comfort those who have

(a) Where the King takes the Lands, Goods, &c. into his Protection, by Reason of Dilapidations by an Abbot: In an Assize against the Abbot and one G. S. his Lessee, he shall not have Aid of the King: For when a Man is taken into the King's Pro-

tection, by Reason whereof another Man is delay'd of his Action, such Protection being without Cause shall be no Cause to have Aid of the King, which would cause further Delay of the Party. 11 H. 6. 10.



have such Protections, in their Business which they have to do in the Countries for the Causes mentioned in the Protections. And it appeareth by the Register, that every spiritual Person may sue forth a Protection for him and for his Goods, and for their Fermors of their Lands for their Goods, that they shall not be taken by the King's Purveyors, nor their Carriages or Chattels taken by other the King's Officers. And it appeareth by the same Protection, that King *Edward* in the fourteenth of his Reign, by special Statute did grant such Privilege to the Clergy, whom he took into his Protection with their Goods and Carriages. And they may have a special Commission directed unto certain Persons to arrest such Purveyors or Officers, and to send them before the King's Council, there to answer their Misdoings in such Case; and for the same Protection see the Register, fol. 289.

[ 30.]

(a) *Writ de Droit de Advowson.*

- B** *A* Writ of Right of Advowson lieth only for him who hath an Estate in the Advowson to him and his Heirs in Fee-simple, or Right of Estate to him and his Heirs in Fee-simple in the Advowson; and if he be disturbed to present, then he shall have the Writ. But if a Man have an Advowson to him and the Heirs of his Body begotten, and for Default of such Issue, &c. the Remainder unto him and his Heirs in Fee-simple; if he be disturbed, he shall not have this Writ, but a *Quare impedit*, because he hath not Title to the Advowson but in Tail, and he ought to maintain the Action by that Title that he claimeth the Possession of the Advowson, and that is of an Estate in Tail. And in this Writ he ought to count of his own Possession, or of the Possession of his Ancestor; otherwise the Writ doth not lie, and he ought to allege Esplees (b) in the Parson; as in taking of gross Tithes, Oblations and Obventions unto the Value of, &c. And the Tenant shall come and make Defence, and (c) may join the Mife by Battel, or Grand Assise, &c. And see the Form of the Count, and the Defence, and of joining the Mife in the Book of *Entries*, fol. 90.
- D** And a Man who claimeth to have Fee-simple in an Advowson may have a Writ *de Recto de Advocatione medietat' Ecclesiæ, vel tertiæ partis, vel quartæ partis Ecclesiæ, &c.*

4 E. 3. 18.  
44 E. 3. 25.  
Willby Brief  
713. and Br.  
Estates 65.  
Tenant in  
Tail brought  
this Writ,  
and recovered  
but an Estate  
in Tail.  
24 Aff. 4. Br.  
Tail 24. he  
may have  
Darrein  
Presentment.

39 H. 6. 20m

And

(a) This Writ being brought by an Abbot Parson imparsoned, if he Counts that he holds to his proper Use, &c. he shall have Judgment accordingly; but if he Counts on a Presentment, *contra*. See 11 H. 4. 88 a. b. and Note; without such Surmise, he shall not have such a Judgment nor Execution; and yet upon a general Judgment, one shall have a *Scire facias* against the Parson to have Execution to hold to one's proper Use, &c. See 19 E. 3.

Judgment 124. yet *Quare* 34 E. 3. *Quare Impedit* 197. 32 E. 3. Judgment 141.

(b) And therefore by *Thorpe*. If a Clerk be Instituted, but not Inducted, he shall not have this Writ of Right of Advowson. 38 E. 3. 9 a.

(c) In this Writ the Summons shall be made on the Glebe, and the Glebe shall be taken into the King's Hands at the Grand Cape. 11 H. 6. 3. 4.

And when a Parson sueth in the Spiritual Court for Tithes, which E  
 31 H. 6 3. a. do amount unto the fourth Part of the Advowson against the Parson of  
 another Parish; then that Parson who is sued in the Spiritual Court  
 may purchase a Writ which is called *Indicavit*; which Writ is a Prohi-  
 bition, and shall be directed as well unto the Judge of the Court as  
 unto the Party, that they do not proceed in the Plea, &c. And then  
 the Patron of that Parson who is so prohibited by the *Indicavit*, may  
 have and sue a Writ of Right of the *Advowson of Dismes*; and the Form  
 of the Writ is such:

*Præcipe A. quod reddat B. Advocation' Decimarum tertiæ partis Ecclesiæ  
 de S. vel quartæ partis, vel medietat' Ecclesiæ, &c.*

And this Writ is founded upon the Statute of *West. 2. c. 5.* in the  
 End of the Statute, and doth not lie of a less Part of the Tithes than  
 of the fourth Part of the Church. But it seemeth that at the Common  
 Law before the Statute, a Writ of *Droit des Dismes* lay and was main-  
 tainable; as, *Præcipe quod reddat Advocationem Decimarum quintæ partis,  
 vel sextæ partis Ecclesiæ, &c.* And that by the Statute of 18 E. 3. which  
 is: *Whereas Writs of Scire facias have been granted to warn Prelates and  
 other Religious Clerks to answer Dismes in our Chancery, and to shew if they  
 have any Thing, or can any Thing say, wherefore such Dismes ought not to  
 be restored to the said Demandants, and to answer as well to us as to the  
 Parties of such Dismes; that such Writs from henceforth be not granted, and  
 the Proceß hanging upon such Writs be annulled and repealed, and that the  
 Parties be dismissed from the secular Judges of such manner of Pleas: Saving  
 to us our Right, such as we and our Ancestors have had, and were wont to  
 have of reason.*

And by that appeareth, That before that Statute the Right of Tithes F  
 was determined in the King's Temporal Court; but the Statute hath  
 now altered the Law. And if a Parson be sued in the Spiritual Court  
 for the fourth Part of the Tithes, for which he purchases *Indicavit*, &c.  
 by which the Judges do surcease; if the Patron of the Parson which  
 sueth in the Spiritual Court hath but an Estate in Tail in the Patro-  
 nage, or for Term of Life, he shall not have a Writ of *Droit des Dismes*,  
 nor other Remedy by the Common Law, to try the Right of the  
 Tithes, for the Feebleness of the Estate. But if two be seised of an Ad-  
 vowson, and unto the Heirs of one of them, they shall join in a Writ  
 of Right of Advowson for the Advantage of him who hath the Fee-simple.

31 H. 6. 14.

12 E. 4. 13 b.  
 St. 34 E. 3.

And also a Man shall not have a Writ of *Indicavit* before that the G  
 Party hath libelled against him in the Spiritual Court. And he ought  
 to shew the Copy of the Libel before the *Indicavit* be granted: And  
 the *Indicavit* doth not lie after Judgment given in the Spiritual Court.

(a) And a Writ of Right *de Advocatione Decimarum & Oblationum  
 quartæ partis Ecclesiæ*, lieth as well as *de Advocatione Decimarum quartæ  
 partis Ecclesiæ tantum.*

2

If

(a) And the Defendant shall have the the Tithes of a Carve of Land, because  
 View, tho' there be but one Church in the it does not thereby appear, whether it be  
 same Town. 38 E. 3. 13. a. But one shall of the Value of a fourth Part of the Church  
 not have a Writ of Right of Advowson of 18 E. 2. Brief 825.



- I If one be Parson imparsoned, and another be Vicar in the same Church, and one of them be impleaded of the fourth Part of the Tithes of the Parsonage, and the other impleaded of the fourth Part of the Tithes of the Vicarage, they shall have several Writs of *Indicavit*, and their Patrons may have several Writs of Right of Advowson of the Tithes, &c. [31.]
- K And it appeareth in 13 H. 6. by the Opinion of *Fortescue*, that before the Writ of *Indicavit* lay of Tithes sued in the Spiritual Court, there was no Writ of *Droit des Dismes* sued thereupon. But it seemeth against Reason; for the Writ of *Droit* of Tithes lay as well for the Patron, as the *Indicavit* lay for the Parson.
- B And in 31 E. 1. it appeareth that a Man shall have a Writ of Right *de medietate Advocacionis*, where an Advowson is partible betwixt two Coparceners, and one of them is disturbed by a Stranger. But the Writ of Right *de Advocacione medietat. Ecclesiæ* lay where two Coparceners do present two Parsons to one Advowson, &c. As there are in some Churches two Parsons, &c.
- C And a Writ of Right of Advowson lieth *de Advocacione Vicariæ, vel præbendæ vel Capellæ*, and such like, as well as *de Advocacione Ecclesiæ*. And the King shall have such Writ as well as a common Person. But a Co. Lit. 17 b.
- D Man shall not tender a Demy-mark against the King to enquire of the Seisin alledged in the King's Count, or Declaration, as he shall in case a common Person bring the Writ. Neither shall a Man have final Judgment against the King, although it be after the Mife joined betwixt the King and the Tenant. Ibid. 294 b.
- E And a Man shall have a Writ of Right of Advowson of a Chapel which is a Donative, as well as he shall have if it were presentable, to the Ordinary.

### Affise de Darrein Presentment.

THE Form of the Writ of *Darrein Presentment* for a common Person is such :

*Rex Vic' salutem. Si A. fecerit te secur', &c. tunc sum', &c. xii. liberos & legal' homines de visu' de B. quod sint coram Justic' nostris, &c. parati Sacramento recognosc' quis Advocat' tempor' pacis presentavit ultim' Personam, quæ mortua est, ad Ecclesiam de C. vel ultim' Vicar', qui mortuus est, ad Vicar' de N. quæ vacat, ut dic', & cujus Advoc' idem A. dic' ad se pertinere ; & interim Ecclesiam illam videant, & nomina eorum imbrevari fac', & sum' B. qui Advoc' illam ei deforc', quod tunc sit (a) ibi, au-*

4 Inst. 136.  
Note, that upon *Quis advocatus*, &c. 20 E. 3.  
*Darrein Presentment* 13.  
per Wilby, and 9 E. 2.

Ibid. 17. If the Affize find Title for a Stranger not named in the Writ, a Writ to the Bishop shall be awarded for him ; and therefore one cannot make Title to a Presentment in Time of War. 7 E. 2. *Darrein Presentment*. 26 E. 3. 41. Ibid. 4. ac.

dit'

(a) Note ; The Party is to be summoned in this Action he shall not vouch any but at the Church. 11 H. 6. 4. per *Martyn*, and him who is Party to the Writ. 21 H. 6. 50. c.

dit' illam Recog'. Et habeas ibi Summ', & hoc Breve. Teste, &c. But for the King the Writ is ; Rex Vic' salutem. Sum' per bonos Sum' xii. liberos, &c. and shall not say, si Rex fecerit, &c. te secur', &c. because the King shall not (a) find Pledges to sue an Action, for he shall not be amerced, &c.

**West. 2. c. 5.** (b) And a Man shall have Assize of *Darrein Presentment*, although he **G** nor his Ancestors do present to the last Avoidance : As if the Tenant for Life or for Years, or in Dower, or by the Curtesy, suffer an Usurpation unto a Church, &c. and die, he in the Reversion, who is Heir unto the Ancestor who last presented, shall have an Assize of *Darrein Presentment*, if he be disturbed. But if a Man present, and then (c) grant the Advowson unto another for Life, and he suffer one Usurpation, or two, or three Usurpations ; now at the next Avoidance he in the Reversion shall not have an Assize of *Darrein Presentment*, if he be disturbed to present. And that appeareth by the Statute of *West. 2. cap. 5.* That the Remedy of the Statute is given for the Heir of him who made the Demise, who is in Reversion, and not for the Lessor himself. *18 E. 2. pl. 20. 6 E. 3. 41.*

**Bro. Presentment 62.**

**10 E. 3. Dar. Presentment 13.** If the Assize find that Tenant by the Curtesy or Tenant in Dower was the last who presented, by that the Heir shall have a Writ to the Bishop, and yet he cannot make Title by that Presentment. *Contra* in a *Quare Impedit*. And *Seton* gives the Reason, because he cannot convey by them. But if the Heir do alledge the last Presentment in her self, and the Assize be to her by Default, and found *ut supra*, yet the Heir shall recover. *Contra*, if they be at Issue upon that Presentment.

**16 E. 2. Darrein Presentment 20.** And if a Man present unto an Advowson, and afterwards the Parson **H** doth resign, or is deposed, and the Patron presents again, and is disturbed, he shall have an Assize of *Darrein Presentment* ; and the Form of the Writ shall be, *Quis Advocatus tempore pacis præsentavit ultim' personam, quæ mortua est ad Ecclesiam, &c.* although that he resign, and be living. And the Form of the Writ is to suppose that the Defendant doth

(a) *Note* ; As to Pledges, if a Writ be directed to a Sheriff of a Matter within a Franchise, the Plaintiff shall find Pledges to the Sheriff, and then the Sheriff shall send to the Bailiff of the Liberty, but the Bailiff shall not take Pledges ; and if he does, the Sheriff shall be amerced, and a *Sicut alias* shall issue. *22 Aff. 3. 14 H. 6. 3. 21 H. 7. 14. pl. 22.*

*Note* ; He who shall not be amerced on a Nonfuit, shall not find Pledges as the Plaintiff in a *Quid Furis clamat*, or *Scire facias*. *11 H. 4. 7. 18 H. 6. 2.*

*Note* ; The Clause, *Et habeas ibi Nomina plegiorum*, is intended of the Plaintiffs Pledges ; but if it be omitted, yet the Writ is good. *26 E. 3. F. Brief 898.*

(b) See *Kitchin* 118. If the Husband seized in his Wife's Right present, and then the Wife dies, so that he is Tenant by the Curtesy, and then the Church becomes void again, the Husband shall have an As-

sisse, &c. But if Lessee for Years presents, and it is afterward confirmed to him for Life on the second Avoidance, he shall not have an Assize, because he is in of a new Estate.

(c) See *2 E. 3. 11.* The Heir of the Grantee of a Reversion shall avoid this for a Purprise on the Tenant for Life ; in a *Quare Impedit* brought by *Stankope* against the Bishop of *Lincoln*, this was denied by all but one. But see the contrary held by *Moyle* and *Prisot*. *34 H. 6. 26, 27.* And so is *33 H. 6. 12.*

*Note* ; If a Feme Purchaser takes a Husband who suffers an Usurpation, and the Husband dies, she is without Remedy. *1 E. 2. Quare Impedit 43.* yet it seems if the Husband, and she being enseint, present, and after suffer an Usurpation, &c. she shall have a *Quare Impedit*. *17 E. 3. 4.* by *Shard.* and *Thorp.* See *Dyer* 259. *pl. 1.* and *Post.* *34. S.* that she shall have it.



doth deforce him of the Advowson, and yet by his Count he counteth that he or his Ancestors last presented unto the Advowson, by which he doth suppose that he is in Possession of the Advowson ; and yet the same is good.

**I** If a Man do present unto an Advowson unto which he hath Right, and afterwards the Incumbent dieth, and a Stranger usurpeth, and presenteth unto this Advowson in the Time of War, and after that Incumbent dieth ; now if he who hath Right do present again, and be disturbed, he shall have an Affize of *Darrein Presentment*, and this Presentment made in Time of War by the Stranger shall not grieve him.

And so if a Man present unto an Advowson, and afterwards the Incumbent (a) dieth, and another Ordinary doth present by Lapse another Incumbent, and after that Incumbent dieth ; now the right Patron shall present, and if he be disturbed, he shall have an Affize of *Darrein Presentment*, notwithstanding the mean Presentments.

And so if the Guardian do present in the Right of the Heir, and the Incumbent dieth, the Heir shall present ; and if he be disturbed, he shall have an Affize of (b) *Darrein Presentment*, although the Guardian did present the mean and the last Presentment. But if a Man present unto an Advowson, and after lease the same for Term of Years, and after the Church is void, and the Tenant for Years doth present, &c. and then the Incumbent dieth and the Lessor presenteth, and is disturbed ; it seemeth that he shall not have an Affize of *Darrein Presentment*, because the Tenant for Years did present in his own Right. But Tenant for Years shall have Affize of *Darrein Presentment*, if he have presented before ; and so shall the Guardian of the Heir, if he have presented before.

**K** If a Man usurp upon an Infant, and present, which Infant hath the Advowson by Descent ; and afterwards the Incumbent dieth, the Infant shall present ; and if he be disturbed, he shall have an Affize of *Darrein Presentment*. But if the Infant purchase the Advowson, and present, and afterward the Church become void, and a Stranger present, and usurp upon the Infant, and then the Incumbent dieth, the Infant presents, and is disturbed by a Stranger ; he shall not have (c) a *Darrein Presentment*, but shall be put to his Writ of Right.

*Shard ; she hath no other Remedy but a Quare Impedit. Pole ac.*

**L**

(a) If

(a) *Nota bene* ; 20 E. 3. pl. 12. 7 E. 4. 20. 22 E. 4. 9. *contr. per* Brian, &c. 6 E. 2. pl. 16. 30 E. 3. pl. 13. *contra* of Tenant in Dower. 5 H. 7. 10. b. 15. 14 E. 3. *Darrein Presentment* 34.

(b) *Note* ; The Issue in Tail may maintain an Affize of *Darrein Presentment* 46. *Affize* 4. *Quare* of Tenant in Dower *supra*. 5. H. 7. 10. 15. 14 E. 3. *Darrein Presentment* 34.

Sir W. W. If the Bishop present by Lapse, pending which the Church avoids, he in

Reversion shall not have a *Quare Impedit*, but *Darrein Presentment*. 46 *Aff.* 4.

*Note* ; The Stat. *Westm.* 2. gave a *Darrein Presentment* to him in Remainder on a Presentment by the Tenant in Dower, by the Curtesy, &c. *Contra*, it seems where the Ancestor of him in Remainder had not presented, *Q.* 20 E. 3. *Darrein Presentment* 13. and Mention is to be made of his Ancestor's particular Presentments in setting forth his Title.

(c) See 35 H. 6. 62. *Post* 34.

8 E. 2. 96.  
20 E. 2.  
*Darrein Presentment* 11,  
13. *Post* 33.  
6 E. 3. 41.  
*Darrein Presentment* 4.  
7 E. 3. *ibid.*  
2. 20 E. 3.  
pl. 12.  
6 E. 2. *Dar.*  
*Presentment* 16.  
20 E. 3. *ibid.*  
13. for the  
Ordinary  
shall present  
in the Right  
of him who  
hath Right.  
Vid. 14 E. 3.  
*Darrein Presentment*. 19. *Berry*  
saith that he  
hath seen the  
*Presentment* in  
the Name of  
the Heir. 20  
E. 3. *ibid.* 12.  
*Green. ac.* 5  
H. 7. 16. *ac.*  
50 E. 3. *Holt.*  
*contr.* 14 H.  
7. 12. *per*  
*Fairfax.*  
[ 32. ]  
35 H. 6. 60.  
*Mes Com.*  
230. *Quare.*  
*Yet all is one*  
*Descent per*  
11 E. 3. *Aff-*  
*ize* 87. 17  
E. 3. *Dar.*  
*Presentment*. 9.  
*Quare Impedit. Pole ac.*

(a) If the Husband and Wife present unto an Advowson in the Right of the Wife, which is appendant unto a Manor of the Wife's, and after the Husband alien one Acre, Parcel of the Manor, with the Advowson in Fee unto a Stranger, and dieth, and the Stranger presents, and alieneth the Acre unto another in Fee, saving the Advowson unto himself, and then the Church voideth; the Wife shall present; and if she be disturbed, she shall have an (\*) *Affize of Darrein Presentment*, because the Advowson was severed from the Acre; but if the Advowson were appendant to the Acre, then the Wife ought to recover the Acre before she present to the Advowson.

20 E. 2. *Dar. Presentm.* 11 and 13, but they seem to make a Difference, when the Disturbance is before the Composition to present by Turns, and when after.

And *Affize of Darrein Presentment* doth not lie for one Coparcener against the other, as appeareth *M. 20 E. 3.* and *M. 15 E. 3. pl. 10. Post 34. N, P.*

33 H. 6. 32. The Church never is Ligious betwixt Parceners; for if they cannot agree, the Ordinary ought to admit the Presentee of the eldest; but contrary of Joint-Tenants. 34 E. 3. 16. 12 R. 2. Counterplea de Vouch. 433.

And if one Defendant die in a *Darrein Presentment*, the Writ is good by the Survivor against the other.

If a Disturber present unto an Advowson, and the Patron bring an *Affize of Darrein Presentment*, and pendant the Writ the Incumbent dieth, if the Disturber presenteth another Incumbent and dies; yet the Patron shall have an *Affize of Darrein Presentment* upon the first Disturbance against the Heir of the Disturber, per Journeys Accounts; and so if the Disturber present two or three Times within the six Months, the very Patron shall have an *Affize of Darrein Presentment* upon the first Disturbance.

This Provision is taken away by West. 2. 29.

*Et provisum fuit coram Domino Rege, Archiepiscopis, Episcopis, Comiti D. bus, & Baronibus, quod nulla Affiza ultimæ præsentationis de cætero capiatur de Ecclesiis Præbendatis, nec de Præbendis.* Hill. 19 H. 3. Vide Post. 35. R.

## (b) *Quare Impedit.*

THE Form of the Writ of *Quare Impedit* for the King in the Right of the Crown is such:

*Rex Vic' Lincoln' salutem. Præcip' W. Archiepiscopo & R. quod permittant nos præsentare idoneam Personam ad (c) Ecclesiam de W. quæ vacat,*

(a) See *Post. 34. 17 E. 3. 3. 22 E. 3. 6.* and *Co. Lit. 333. a. 363.*

(\*) *Post. 36. F. 22 E. 3. 6. 17 E. 3. 3.*

(b) Note; The Summons in this Writ shall not be made at the Church, as it shall be in a Right of Advowson, for in this Writ the Advowson is not demanded, but the Disturbance is to be punished for the Damage done to the Person, by Danby and other Justices. 11 H. 6. 3.

(c) Note; There needs not the Name of the Saint, as, *ad Ecclesiam de Sancti M. de*

W. except there be more Churches in the same Vill 9 *Eliz. Dyer 259. 13 H. 4. 872.*

Note also; A Writ brought by the King or Queen is not *unde queritur*, that the Defendant *injuste, &c.* 18 E. 3. 1. 2. (as it is in the Case of a Common Person,) also if the Words *ut dicitur* be omitted, the Writ is good; yet See 33 E. 3. 31. That in the King's Case it shall be *ut dicitur*; but in that of a Common Person, in all Writs it shall be *ut dicit*, and if it be *ut dicitur*, the Writ shall abate. 17 E. 3. 50, 74.



cat, & ad nostram spectat Donationem, & unde præd' W. Archiep' & R. nos injuste impediunt, ut dicitur. Et nisi, &c. sum', &c. præd' Archiep' & R. quod sunt coram nobis, &c. vel coram Justic' nostris de Banco, &c.

Use of Darrein Presentment, there he may have a *Quare Impedit*, but not *econtra*. C. 5 Part 102. In a *Quare Impedit*, the Writ fuit ad Ecclesiam; and the Count de Advocatione duar' partium.

Vid. Fitz.  
Na. B. 25.  
Where a  
Man may  
have an Af-

For the King may sue this Writ, and every Writ, in what Court he will.

F And if the King hath Title to present unto an Advowson, by reason of the Lands and Temporalities in his Hands, of a Bishoprick, or Abbey, or Guardianship of an Heir, then the Writ is:

Rex Vic' Lincoln' salutem. Præcip' W. Archiepiscopo, quod permittat nos præsentare idoneam Personam ad Ecclesiam de W. quæ vacat, & ad nostram spectat Donationem, ratione (a) Episcopatus Cantuar' nuper vacanti & in manu nostra existent', & unde idem Archiep' nos injuste impedit, ut dic', &c.

And if it be unto the Prebend, then thus: Ad Præbendam de I. in Ecclesia, &c. quæ vacat, &c. ratione Episcopatus, &c. And if it be by Reason of Ward, then the Writ shall be, Quæ vacat, & ad nostram, &c. ratione (b) Custod' terr' & hæredis T. quondam Comitis de A. defuncti, qui de nobis tenuit in capite, & in manu nostra existentis, & unde præd', &c. nos injuste, &c.

And if it be by reason of Wardship by Occasion of another Wardship, then the Writ is, Quæ vacat & ad nostram, &c. ratione Custodiæ terr' & hæred. J. T. in manu Domini E. nuper Regis Angl', Patris nostri, ratione Custod' terræ & hæredis S. de C. quondam Comitis Glouc' defuncti, de quo idem I. terram suam tenuit per servitium militar', in manu ejusdem Patris nostri existent', & unde idem, &c. nos injuste impedit, ut dicitur.

And by the Register the King shall join with another Person in a *Quare Impedit*; and the Form of the Writ is such: (c)

Rex vic', &c. præcip' R. de C. quod juste, &c. permittat nos & P. de T. præsentare idoneam Personam ad Ecclesiam de K. quæ vacat, & ad nostram, ratione Custod' terræ & hæred' I. quæ fuit uxor T. de N. qui de nobis tenuit in capite, defuncti, in manu nostra existentis, & ad ipsius P. de T. spectat Donationem, & unde præd', &c. nos & præfat' P. de T. injuste impedit.

L. 2

But

(a) Ratione Episcopat', i. e. Temporalium Episcopatus. 15 E. 3. F. Brief 679. ratione Abbatia vel Episcopatus. 39 E. 3. 21. But if it be by Alienation without Licence, the Writ is general, and the Count Special. 14 E. 3. *Quare Impedit* 54.

(b) A Writ was brought by the Queen in the like Case, ratione minor' ætat' I. filii & hæredis S. in Custod' Regine existent' de qua præd' S. Terram suam tenuit in Capite, where by the Count it appeared, that he held of one G. who was the Queen's Ward, and yet held good. 24 E. 3. 54.

(c) 'Tis held by some, there is a Diversity, viz. where the King has Part of a Thing, ratione Prærogativæ; there if it be entire, he shall have the whole, as if one of the Obligees be Felo de se, or outlawed, the King or his Assignee shall have the Action sole; but if he has Title to a Parcel or Part, by another, there the King may join as if an Obligation be made to a Customer for Customs, &c. there the King and the Customer shall join. See 8 E. 4. 4. a. 24. b. 19 H. 6. 47. a. 10 H. 4. 3. Dyer 95. Post. (or Lib. Parliament) 288.

11 E. 3. Br.  
*Quare Imp.*

But now the common Opinion is, that the King shall have the whole Presentment alone, and alone shall have the Action. But methinks that it stands with reason that the King and the other join; as in a popular Action the Party shall sue for the King and for himself, and the Words of the Writ are, *Qui tam pro Domino Rege, quam pro seipso sequitur*, &c. and that in an Action of Debt, &c. and by the same Reason the King may sue for himself and for the Party. And the common Experience is, that a Man shall hold Lands in common with the King, and also Chattels: And by the same Reason they may have the Presentment or Advowson in common.

See 20 H. 4.  
3. contr. and  
9 H. 6. 60.  
contr. but  
not jointly.

And if a Man be disturbed to present unto a Parsonage, then the H Writ shall be, (a) *Præc'*, &c. *quod permittat ipsum præsentare*, &c. *ad Ecclesiam*, &c. for the word *Ecclesia* is always intended a Parsonage. And if it be a Vicarge, then the Writ is, *quod permittat ipsum præsentar' ad Vicar'*. And if it be a Prebend, then *ad Præbendam*; and if a Chapel *ad Chapellam*; and so he ought to (b) name the Advowson as it is, &c. 8 H. 6. 22.

[ 33 ]

14 E. 4. 2. 31  
E. 3. 185. 2  
R. 3. *Quare*  
*Impedit* 102.  
1 H. 5. 1. 2.  
17 E. 3. 12.  
44 E. *Quare*  
*Impedit* 76.  
21 H. 6. 17.  
inf. C. D. H.

A Man shall not have a *Quare Impedit de Advocat' medietatis, nec de medietat' Advocationis*, &c. And if one Man hath the Nomination unto an Advowson, and another hath the Presentation, if he name his Clerk, and he who hath the Presentation, present (c) another Clerk; he which hath the Nomination shall have a *Quare Impedit*, and the Writ shall be, *quod permittat ipsum præsentare*, &c. and in his (d) Count he shall set forth the special Matter, and it shall be good. (e) And so if a Man hath a Chantry, which is a Donative by Letters Patent, and he give the same unto a Clerk, who is disturbed by another, or another doth present to his Chantry, or giveth the same by Letters Patent; he which hath Right shall have a *Quare Impedit* of that Donative; and the Writ shall be, *quod permittat ipsum præsentare*, &c. *ad Cantariam*, &c. and in the Count he shall set forth the special Matter. See 14 H. 4. 11.

And

(a) And Note; Such Writ was at the Common Law. 14 H. 3. *Quare Impedit* 183. *ad Capellam*. 2 H. 3. Grants 89. *ad Vicariam*.

(b) In a *Quare Impedit Præsentare ad Ecclesiam*, 'tis a good Plea to the Writ, that it is but a Chapel; for *Ecclesia* shall be intended a Parish-Church. 5 E. 3. 60. 22 E. 3. 2. a. 12. a. 8 H. 6. 32. a. 37. a. 13 H. 4. Brief 870. & *infra*. E, F.

(c) See accordingly 1 H. 5. 1. 2. 4 E. 3. 69. 21 H. 6. 17. a. and he shall have a Writ to the Bishop to admit the Presentee whom he has named to another, whether the Writ be brought against him who had the Presentation, or against a Stranger; yet See 24 E. 3. *Quare Impedit*. 27. and 2

R. 3. *Quare Impedit* 102. that it lies not for him who has only the Nomination.

(d) See accordingly 22 E. 4. 22. a. 14 E. 4. 2. b. and 14 H. 4. 11. the Writ. *Quod permittat nominare* was abated by Award in the like Case.

(e) A *Quare Impedit* of a Chantry ought to shew in what Church or Chapel the same is. 12 H. 4. 19. See *Lib. Entr.* 499.

A *Quare Impedit* lay of a Chapel at Common Law. 24 H. 3. *Quare Impedit* 183. And so it did of a Prebend. 13 R. 2. Brief 643.

Note; A *Quare Impedit* of a Prebend must be brought in the County where the Cathedral Church is, and not in the County where the Body of the Prebend lies. 15 E. 3. Brief 235, 643.



- D** And if a Bishop be disturbed to present where he ought to make Collation, the Writ shall be, *quod permittat ipsum præsentare, &c.* and he shall count upon the Collation. (a)
- E** (b) And so if the King be disturbed to collate by his Letters Patent unto his free Chapel, he shall have a *Quare Impedit*, and the Writ shall be, *quod permittat ipsum præsentare, &c. ad Præbendam* in his free Chapel, &c.
- F** And a *Quare Impedit* lieth of a Priory, or of an Abbey; and the Writ shall be, *quod permittat ipsum præsentare ad* (c) *Prioratum seu Abbatiam, &c.* See the Book of *Entries* 59. and 18 *E.* 3. *Quare impedit* accordant 151.
- G** And there is another Form of Writ, *quod permittat ipsum præsentare ad Ecclesiam Domus S. Martini Bristol', quæ vacat, &c.* and so of an Hospital, and the like. *Vide Lib. Entr.* 506.
- H** And a Man shall not have a *Quare Impedit* if he cannot alledge a Presentment in himself or in his Ancestors, or in another Person, from whom he claimeth the Advowson, and that in his Count, if it be not in special Cafes: As if a Man at this Day erect a Church parochial by a Licence of the King or other Chantry, which shall be presentable, &c. if he be disturbed to present to the same, he shall have a *Quare Impedit*, without alledging of Presentment in any Person, and shall count upon the special Matter. 14 H. 4. 36. b.  
21 E. 4. 2. 3.  
16 H. 7. 8.  
Keble ac.
- I** (d) And if a Man doth recover an Advowson against another in a Writ of Right, when the Church voideth he shall present, and if he be disturbed, he shall have a *Quare Impedit*, and alledge the Presentment in him against whom he recovered, without alledging any other Presentment. And a Man shall have a *Quare Impedit* and alledge a Presentment by his Proctor, and it shall be good, without alledging a Presentment in himself: *Quod vid.* 17 *E.* 3. Post. 36.  
Post. 35. O.
- K** (e) And if an Abbey hath been Parson imperfonee Time out of Mind, and afterwards the Abbey is disturbed, he of whom the Advowson is holden shall present, and if disturbed, shall have a *Quare Impedit*, without alledging of any Presentment in the Count, but shall shew the Special Matter. C. 2. Part  
47. b. ac.
- L** (f) If Coparceners make Partition to present by Turns, and so do, and afterwards the younger Sister die, her Heir within Age, and in Ward Ant. 32. G.  
22 E. 4. 2.

(a) See 16 *E.* 3. Brief 660. *Rast. Entr.* 501. 17 *E.* 3. 64.

(b) See 13 *H.* 4. Brief 870. where *Ecclesia* shall be intended a parochial Church. See 16 *E.* 3. Brief 660. *ant. H.*

(c) *Note*; A Priory may be Parochial and Presentative, and then the Writ may be *ad Ecclesiam*. 13 *H.* 4. Brief 870. 18 *E.* 2. Brief 828. and *Trespas* 237.

(d) See 14 *E.* 2. *Quare Impedit* 171, 172. where he may have a *Scire facias* on the Judgment for the Disturbance, but that on the Judgment in a Writ of Right, he had Seizin delivered by the Sheriff; yet for that he cannot have Seisin of the Church without a Presentment, when the Church avoids, he shall have a *Scire facias* for

the Presentment. 15 *E.* 2. *Quare Impedit* 172.

(e) In a *Quare Impedit*, the Plaintiff ought to declare that the Presentment was made in Time of Peace. 13 *E.* 2. *Quare Impedit*. 175. *ant.* 31.

(f) See 21 *E.* 3. 32. If the King has an Advowson in Common, or with another, as by reason of Nonage of an Infant who has Title to present by Turn, or otherwise, the King by his Prerogative shall have the Presentment on every Avoidance, as long as any of the Lands are in his Hands. See 21 *E.* 3. 37. The King made Title only to the fourth Avoidance by Reason of Wardship of the Parcener, after Partition made.

31 E. 3. 2. Ward to the King, and afterwards the Church void two or three Times during the Nonage of the Heir, who is the King's Ward; the King shall present, and if he be disturbed, he shall have a *Quare Impedit* alone as it appeareth *M. 22. E. 4.* But, saving the Opinion of the Book, I conceive the Law to be otherwise, because the Inheritance of the Presentment is (a) several, &c. (b) And if two Sisters be, and have an Advowson which becometh void, the eldest Sister shall have the first Presentment; and so the Husband of the eldest Sister (if he be Tenant by the Curtesy of the Advowson) shall have the first Presentment; and the Tenant in Dower shall have but the third Presentment, &c.

16 H. 3. 8. (c) If the King have an Advowson in Fee, which voids, and during the Avoidance the King granteth the Advowson in Fee, the King shall not present to this Avoidance: But if the King have an Advowson by reason of the Temporalities of a Bishop, and during the Avoidance the King restore the Bishop the Temporalities, yet he shall present unto the Advowson and not the Bishop for this Avoidance.

3 Cro. 196. (d) If the Heir sue his Livery and hath it, yet the King shall present unto an Advowson which became void during the Time that the Advowson and Land were in the King's Hands. (e)

24 H. 3. (f) If a Man be seised of an Advowson in gross or in Fee appendant unto a Manor, and the Advowson void, and he dieth, his Executor shall present and not the Heir, (g) because it was a Chattel vested and severed from the Manor. And if a Man be disseised of a Manor unto which an Advowson is appendant, and the Advowson become void, the Disseisee may present and have a *Quare Impedit*, although he hath not entered into the Manor. But if the Bishop die, and the Advowson happen void before his Death, the King shall present unto the same by Reason of the Temporalities, and not the Bishop's Executors. 8 E. 2. Presentment 10. 39 E. 3. 21.

30 E. 3. 26. ac. Vid. after 34 K, and 35 A. 29 E. 3. 5. 27 E. 3. 89. (h) So if a Man have a Manor unto which an Advowson is appendant in Fee, and the Church void in the Father's Time, and the Father die, and

2 H. 4. 19. 40 E. 3. 14. after 44 K, 143 E.

(a) But if the King's Tenant dies, having Issue three Daughters under Age, the King shall have all the Presentments. See 31 E. 3. *Quare Impedit* 100. 38 H. 6. 9. 22 E. 4. 9. 20 E. 3. *Quare Impedit* 65. 45 E. 3. 12. 34 H. 6. 40.

(b) Vide *Post*. 34. (O, P) 5 H. 5. 16. 18 E. 3. 22.

(c) Vide *contra*. Except there are special Words of the Avoidance. 16 H. 7. 8. Dyer 282. 302. a. 348. a. and See accordant 18 E. 3. 58. a. but contrary in the Case of a common Person. 11 H. 4. 54. b. and an Avoidance fallen is not grantable by a common Person. Dyer 283, 348. See *Stamf. Prerog.* 44. 46 E. 3. Grants 50. 18 E. 3. 21. &c. in *Marg.*

(d) Note; If the King be seized of a Manor to which an Advowson is appendant, whereto he has no Right of Seisin,

and afterwards there is an *Ouster le main cum exitibus*; if an Avoidance happens in the mean Time, and the King has presented, the Incumbent shall not be removed; but if he has not presented, he shall have the Avoidance. See 5 E. 3. 6. 4 E. 3. 2. 18 E. 3. 21. 24 E. 3. 28, 29. 27 E. 3. 81, 89. 39 E. 3. 21.

(e) See 18 E. 3. 22. 46 E. 3. Grants 50. 6 E. 2. Presentments 9.

(f) See 21 H. 7. 21. 44 E. 3. 3. 21 H. 6. 9. 33 H. 6. 33. 9 E. 4. 39.

(g) See 9 H. 6. 33. 4 E. 3. 2. *contra*. 39 E. 3. 21. *contr. sed* 44 E. 3. accordant.

(h) Note; Tho' the six Months pass in the Father's Life-time, the King shall have the Presentment against the Bishop, if the Church be not full. 18 E. 3. 21. a. 29 E. 3. 8. Where the King grants the Advow-



and his Heir in Ward to the King, the King shall have the Presentment. 18 E. 3. 21. 27 E. 3. *Estoppel* 240. *contr.* 39 E. 3. 21.

T (a) Guardian in Socage of a Manor unto which an Advowson is appendant, and the Church void, the Heir shall present, and not the Guardian, because he cannot account for the same.

V If the King grant unto an Abbot and his Successors, that the Monks shall have the Temporalities during the Vacation, now if the Advowson happen void during the Vacation, the Monks shall present to the same. 17 E. 3. 51. *M.* 30 E. 3.

A The Presentation to the Vicarage doth of common Right appertain unto the Parson; but he may grant the same to another by Assent of the Patron and Ordinary.

The Heir in Tail shall not have a Presentment fallen in the Life of the Tenant in Tail, but the Executor of Tenant in Tail. (b) So the Termor shall have the Presentment which happeneth during the Term, although he hath not presented during the Term to the Advowson, &c. Post 34. [34.]

C (c) The King may repeal his Nomination or Presentation, but a common Person cannot so do. And the King shall have Writ upon a Bishop to induct one into a Prebend which the King hath given unto him; and to give him a Seat in the Quire, and a Place in the Chapter-House. 7 H. 4. 32. ~~31~~  
Dyer 260.  
25 E. 3. 47.  
Robert de Kelsey's Case.

E And a Man shall have a *Quare Impedit* of an Hermitage, and a Writ to put him into corporal Possession.

F (d) If the King recover by *Quare Impedit*, and afterwards ratify the Estate of the Incumbent; yet at the next Avoidance the King shall present, because his Recovery and Judgment for him was not executed. 7. 9 E. 3. In a free Chapel of the King, where the Dean ought to give the Prebends, if he do not collate within six Months unto them, then the King shall present by Lapse to them as Ordinary.

G If an Advowson be void by six Months, at which Time the King is seised of the Temporalities of the Bishoprick, the King shall present to this Advowson, as the Bishop should do; and the King shall have a *Quare Impedit* of the Sub-Deaconry of *Tork*, which voided when the Temporalities of the Archbishoprick were in the King's Hands; and the Writ shall be, *quod permittat eum præsentare*; and yet the King shall give this Sub-Deaconry by his Letters Patent.

Where

Advowson to A. till his full Age, and the Church avoids, during the Term, and afterwards the Heir presents and comes of full Age, before the Church is full, the King shall have the Presentment.

(a) It seems, the Presentment ought to be in the Name of the Heir, and yet a Guardian in a *Quare Impedit* against him may make Title against the Stranger in Right of the Heir, and also have a Writ to the Bishop thereupon, but he cannot maintain a *Quare Impedit*. 29 E. 3. 5, 14, 22. 27 E. 3. 89. a. 8 E. 2. Presentment 10.

(b) See 9 E. 3. 10. 19 H. 6. 33. *Perk.* 21.

(c) The King may repeal his Presentment, altho' the Clerk be Instituted, provided he be not Inducted. 25 E. 3. 47. a. 38 E. 3. 49. But a common Person cannot repeal his Presentation. *Dyer* 292. a.

*Patronus autem potest Præsentare plures accumulative, Et lo us erit gratification' Episcopi, Lindw. De Jure patronatus. Cap. 1. Sec 14 E. 4. 2.*

(d) See a good Case that accords herewith, 18 E. 3. 21. and see 9 E. 3. 20

31 E. 3. Where Partition is made betwixt Coparceners by Licence of the H King of an Advowson in a Court of Record, as in the Common Pleas, and afterwards the Coparcener who hath the next Turn dieth, her Heir within Age and in Ward to the King, and the Church void; the King shall have a *Scire facias* against the other Coparcener, &c. upon that Partition, and yet he was a Stranger to the Partition.

5 E. 3. *Qu.*  
Imp. 59. (a) If two Coparceners make Partition to present by Turns, although I that one of the Coparceners do afterwards usurp upon the other Coparcener, and presents in her Turn, that Presentment shall not put her out of Possession, but she shall have her Turn when it falls again, and shall have a *Quare Impedit*, or a *Scire facias* upon the Composition if it be upon Record, if she be disturbed for to present, &c.

50 E. 3. 26.  
38 E. 3. 4. (b) If a Bishop make a Collation, and before Induction or Installa- K tion dieth, and the King seifeth the Temporalities; he shall have this Presentment, because that the Church is not full against the King, until the Parson or Prebend be installed or inducted.

24 E. 3. 33. (c) If a Parson have a Parsonage, and afterwards doth take another L Benefice without Dispensation; now the first Benefice is void, and the Patron thereof may present, for this Avoidance is called Cession.

Br. Present-  
ment *al Eg-*  
*lise* 46. (d) If in Time of Vacation of an Abbey or Priory, a Church happen M void, which is of the Patronage of the Abbot or Prior, and a Stranger doth usurp and present thereunto; this Usurpation shall not prejudice the Successor \*, but at the next Avoidance of the said Church he may present, and have a *Quare Impedit*; but otherwise it is if an Usurpation shall be had in the Time of his Predecessor, for that shall put the Successor out of Possession, if the six Months be past.

34 E. 3. 26. If a Vicarage happen void, and before the Parson present, he is made N a Bishop, &c. yet he shall present unto this Vicarage, because it was a Chattel vested in him.

(e) The Founder of a Priory shall have a *Quare Impedit* against the O Subprior and the Convent, if they disturb him to present to an Advowson which belongeth to the House, if it void during the Vacation, where the Founder ought to have the Temporalities during the Vacation. P. 9 E. 3.

39 E. 3. 21.  
Ant. 33 N. If a Man traverse an Office found of a Manor unto which an Advow- P son is appendant, and upon the Traverse (f) the King leaseth the Ma- nor

(a) See 12 E. 3. 9. 13 H. 8. 14. 22 E. 4. 9. 27 H. 8. 11.

(b) See 38 E. 3. 3. 4. And so it is of his Tenant who dies before his Clerk is inducted. 38 E. 3. 9. a. If the King has a Presentation, *pro hac vice*, and his Clerk dies after Institution, and before Induction, the King shall present. 18 Eliz. Dyer 348.

See *per* W. W. 22 H. 6. 27. 21 E. 4. 34. 38 E. 2. 41. 11 H. 4. 91.

(c) See 4 Co. 74. b. 11 H. 4. 37, 60, 91. 5 E. 3. 9.

(d) See Co. Lit. 263. b. West. 2. c. 5.

If a Parson be admitted and instituted by the Bishop, he is Parson against

every common Person before Induction, and has the Cure of Souls, and shall have the Profits before Induction. 38 E. 3. 4. by *Kirton* and *Moretin*. (See *Quare per* W. B.)

(e) The Patron of an Abbey presentative brought a *Quare Impedit* against the Superior (Subprior) and Convent. 11 E. 3. *Quare Impedit* 157. 18 E. 3. 15.

(f) For in that Case the Lease amounts to a Restitution, but if the King seizes a Priory alien, and leases the Priory to a Farm during the War, without mentioning the Advowson, the King shall have it. 29 E. 3. 18. (or 98)



nor unto him who tendred the Traverse without mentioning the Advowson, and afterwards the Church void, he who tendred the Traverse shall have the Presentment, if the Traverse be found for him.

5 E. 3. 6.

**Q** If a Feme be assigned the third Part of a Manor unto which an Advowson is appendant in Dower, she shall have the third Presentment.

**R** If the Patron be out-lawed in Trespass, and the Church void, the King shall present, because of the Out-lawry (a).

14 H. 6. 24.

*Newton,*  
Feme is disturbed and taketh Husband, the Church void, the Husband presents, the same shall vest the Right in the Wife.

**S** (a) (b) If a Feme purchase an Advowson, and take a Husband, and the Church void, and the Stranger doth present, and the Husband suffer an Usurpation, &c. by this Usurpation the Wife shall be out of Possession, after the six Months past; and she shall be put to her Writ of Right of Advowson, if she have presented before; and if she have not presented, she is without Recovery: But otherwise is it, if the Feme shall have an Advowson by Descent, or by Course of Inheritance.

**T** If an Infant or a Feme Covert do not present within six Months, the Bishop may present for Lapse (c).

**U** (c) One Joint-tenant, or Tenant in common, shall not have a *Quare Impedit* for the Advowson which they have in common, or in Jointure, if one of them present solely against his Companion. But if two (d) Coparceners cannot agree in the Presentment, the eldest Sister shall have the first Presentment, and he who hath her Estate shall have the first Presentment; and if he be disturbed by the other Coparcener, she or he who hath her Estate shall have a *Quare Impedit* against the other (e) Sister; and the Coparceners and those who have their Estates, shall present as Coparceners ought to do, *scil.* the Eldest first, and then the Middlemost, and then the Third, and then the Fourth, and so as they shall be of Age, &c.

35 H. 8. Dy. 55.  
Advowson descends to two Coparceners, one of full Age, and the other within Age, the Guardian marrieth the

Eldest, the Church void, he presents in both their Names, the Youngest cometh of Age. Some are of Opinion, that if they do not agree the Eldest shall present, and it shall be her Turn: Others contrary. *Quare.*

**X** If an Infant have a Manor unto which an Advowson is appendant, and suffereth a (f) Usurpation when the Church becometh void, and afterward at full Age grants the Manor in Fee, and afterwards the Church become void; the Infant shall present, and not the Feoffee of the Manor, for the Advowson was severed by the Usurpation; and yet the Infant may present to the same.

Post. 35. M.  
[35.]

**A** If the King's Tenant hath Title to present unto an Advowson, which is void, and the six Months pass; and afterwards the King's Tenant di-

18 E. 3. 21.  
Ante 33. R.

M

eth

(a) See 26 Aff. pl. 71. 4 E. 6. 58. 35 H. 6. 63.

(b) 1 E. 2. *Qua. Imp.* 43. ante 31. 1. West. 2. c. 5. 19 H. 6. 40. 22 H. 6. 26. 43 E. 3. 15. 22 E. 4. 9.

(c) Vide Post. 35. 6 E. 4. 10. 27 H. 8. 11. 34 H. 6. 40.

(d) See 9 El. 333. a. Bro. *Presentment al Elise* 53, 34, 56, 40.

(e) See Doctor and Student 116. b. ante 33. B.

(f) See accordant adjudged, 16 E. 3. F. *Qua. Imp.* 67. But contra by Danby, 33 H. 6. 13. in the like Case. Yet if the King was so seized, and granted the Manor *cum Advocacione*, at the next Turn the Grantee shall present; *per Cur'*. For it was not made dispendant by the King's Usurpation.

See 16 E. 3. Bro. *Presentment* 60. That an Infant may present.

eth before the Bishop presenteth for Lapse, his Heir within Age, and in Ward to the King, the Bishop shall not present for Lapse, but the King shall have this Presentment by reason of the Wardship. *P. 18 E. 3.*

If Tenant in Tail of a Manor, unto which an Advowson is appendant, B discontinue the Manor in Fee with the Advowson, and after the Discontinuor granteth the Advowson unto another in Fee, and afterwards doth re-infeoff the Tenant in Tail of the Manor, who dieth seized of the Manor; his Heir shall present unto the Advowson when it shall happen void: And if he be disturbed, he shall have a *Quare Impedit*, because he is remitted unto the Manor, and hath not Remedy to come to the Advowson. *29 H. 6. Quare Impedit 79.*

The Defendant in a *Quare Impedit* may sue a *Quare Impedit* against the C Plaintiff, if his Clerk be not admitted nor instituted. And if the Plaintiff's Clerk be instituted and inducted pendant the Writ, it shall not abate the Plaintiff's Writ; but in that Case if the Defendant recover against the Plaintiff, he shall avoid the Plaintiff's Clerk; and so if the Defendant's Clerk be admitted pendant the Writ against him, if the Plaintiff recover, he shall avoid the Defendant's Clerk: But if the Clerk of the Defendant were admitted and instituted at the Time of the Purchase of the Writ, and the Plaintiff purchase the Writ only against the Patron, not naming the Incumbent; although the Plaintiff recover, he shall not avoid the Defendant's Clerk, because he might have named him in the *Quare Impedit*.

If a Stranger do present unto an Abbey or Priory which is eligi- D ble by the Convent, and his Clerk be instituted and inducted; *Quare*, how this Wrong may be after redressed and reformed. See *22 H. 6. 25. &c.*

20 Eliz. 11.  
Hare's Case,  
he ought to  
be inducted.

If a Man have a Chapel or Chauntry which is donative by Letters Pa- E tent, and he (a) once present unto the Ordinary his Clerk to the Chauntry, he shall never after collate, but ought to present unto the Bishop; and if he do not present within six Months, the Ordinary shall have Advantage of the Lapse. See *22 H. 6. 26, &c.*

A Presentment made by a Stranger unto an Advowson which is ap- F propriated unto an Abbey, be the Presentment in the Time of Vacation, or in the Time of the Abbot, is void, although that the Clerk be instituted and inducted: But if the Abbot himself present unto the (b) Bishop his Clerk to an Advowson which is appropriate to his House, this Presentment doth disappropriate the Advowson, and make it presentable after; and if he do not present within six Months after every Avoidance, the Bishop shall present for Lapse. The Bishop ought to present his Clerk for whom it is first found by a *Jure Patronatus*. See *34 H. 6. 39. G*

Post. 48. H.

1 H. 7. 9.

12 & 13 E.

The Bishop shall not have the Advantage to present by Lapse, where H the Church doth become void by Resignation or Deprivation, without giving

2

(a) 'Tis otherwise if a Stranger does it alone. *22 H. 6. 25, 26. Vide Post. 42.*

(b) So that it seems the Presentment

without Institution, &c. is a Disappropriation. *11 H. 6. 32, 33. 22 H. 6. 28.*

See *Plowd. 500, 501. Bro. Qua. Imp. 38, 111. 38 H. 6. 39.*



giving (a) Notice thereof to the Patron. See 5 E. 4. 9. 1 H. 7. 9. Bro. Dy. 293. c. 237. Notice, &c.

I Where the Bishop doth refuse the Clerk of the Patron for Non-ability, or for Crime, he ought for to give (a) Notice thereof to the Patron, otherwise he shall not present for Lapse; but after the six Months past, the Patron shall have a Writ to the Bishop, if the Church do remain void, and the Bishop hath not collated thereunto. Dr. and Stud. 177. 12 El. Dyer 293.

K The Chancellor of *England* shall present unto all the King's Churches which are under the Sum of twenty Marks by the Year, which are in the King's Gift, and in the Right of the Crown: But if the King hath them by any other Title, then the Chancellor shall not present unto them. See 13 E. 4. 3. 11 H. 4. 80. 38 E. 3. 3.

L The Death of one Plaintiff, nor the Non-suit of one Plaintiff shall not abate the Writ, but he shall be severed. Co. 10 Part, 134.

M Where an Infant hath an Advowson by Descent, and the Church void-eth, and he who hath Title paramount doth usurp, and present unto the same Church, and the six Months do pass; he is remitted by this Usurpation, and the Infant out of Possession, and without Remedy by that Usurpation. 38 E. 3. 36. Co. Lit. 246. a.

N If a Man hath an Advowson, and the Church doth become void, and two Strangers do severally present their Clerks to the Bishop to that Advowson; the Patron shall have divers *Quare Impedit*s against them, if he will, and shall have several Judgments, and shall recover several Damages for their several Presentments and Wrongs done.

O If a Man maketh another his Proctor, to present unto all his Advowsons, and to do several Things for him; if the Proctor present, as Proctor M 2 tor 17 E. 3. 60. Fitz. *Quare Impedit* 68.

(a) Nor shall Lapse devolve to the King without Notice. See also touching Notice, 7 Eliz. Dy. 2. 5 E. 4. 9. 1 H. 7. 9. Bro. Notice 6, & 29, and 14. H. 7. 21. A Diversity where the Patron is a Layman, or not. Also 15. H. 7. A Diversity where 'tis of a Matter whereof the Patron may take Notice, or not.

(Sir M. H.) Note; No Lapse shall be without Notice, although that the Church be declared to be void, for that the Incumbent was *merè Laicus*. Dyer 293. *Pickering's Case*, in the Case of a Layman. In the Case of Death, the six Months shall be computed from the Time of the Death, and where the Patron presents, and the Bishop refuses for Non-ability, the Bishop ought to give Notice of the six Months: Yet if the Patron does not present within six Months from the Time of the Death, (and in that Case, not from the Time of Notice) of the Refusal) the Lapse shall incur. Dyer 327. b. &c. for the Church of *Haughton*. And see there, that Notice ought to be given at the Church-Door, if the Patron cannot be per-

sonally found. Dyer 346. *Baron's Case*. And for the Form of a publick Intimation of Deprivation for not reading the Articles, see Dyer 369.

(Sir W. W.) The Statute 24 H. 8. of Residence, cap. 2. If one has a Benefice with Cure of 8 l. Value and takes another, the first shall be void as if he were dead. Here the Bishop need not give Notice to the Patron, because it is void by the Statute, by Dyer and Weston; which Brown denies, and said, That the Notice remained at Common Law, and by the Common Law the Bishop should give Notice of a Cession where one one had a Plurality, &c. 7 Eliz. 116.

26 H. 8. If any Spiritual Person be certified by the Bishop into the Exchequer for Non-Payment of Tithes, that *ipso facto* the Church shall be void. Here the Bishop shall not give Notice to the Patron of this Avoidance, because a newer Avoidance is given by the Statute, than was at the Common Law before, by Dyer and Weston, 7 Eliz. which Brown expressly agreed, (denied) *ut supra*.

tor unto him, unto an Advowson unto which he hath Right to present in his own Right, that Presentment shall put him out of Possession of the Advowson, and shall give the Possession to the other.

In a *Quare Impedit* for the King, although the Defendant hath a Writ <sup>P</sup> unto the Bishop against the King, the King may have a new *Quare Impedit* against him of the said Avoidance, and make other Title.

See 11 E. 3.  
*Quare Imp.*  
117.

If Prior and Convent ought to chuse the Abbot, and name him to the <sup>Q</sup> Patron, and he to present him to the Bishop, and they chuse one for Abbot, and name him to the Patron, (a) and the Patron doth present another to the Bishop; they may sue in the Spiritual Court for Remedy, as it is said, *H. 11 E. 3. Tamen quare*; for it seemeth they are enabled to sue at the Common Law, as well as they are enabled to chuse and name the Abbot. As the Prior of *Westminster* and the Convent hath Power to sue their Abbot for an Advowson. *M. 20. E. 3.*

40 E. 3. 28.  
per *Fortescue*.

If the Disturber present two or three Times within the six Months, yet a *Quare Impedit* lieth against the Disturber upon the first Presentment, if he purchase the Writ within the six Months.

[36.]  
16 H. 7. 8.  
per *Keble*.  
39 H. 6. 25.

Where a Man doth recover in a Writ of Right of Advowson, he shall <sup>A</sup> present at the next Avoidance, and shall have a *Quare Impedit*, without alledging any Presentment in himself or his Ancestors, but shall declare upon the Record, (b) or may have a *Scire facias* upon the Recovery. And so may his Heir have a *Scire facias* upon that Recovery against the Heir of the other Party, at the next Avoidance after the Recovery; but not after, as it seemeth.

15 E. 2. fol.  
174.

If a Man recover in a *Quare Impedit*, he shall have a *Scire facias* against <sup>B</sup> the Patron and the Incumbent who made Default, if he will sue Execution of this Recovery (c).

If Coparceners make Partition in the Chancery, or in the Common <sup>C</sup> Pleas, to present by Turns, and afterwards a Stranger doth usurp in their several Turns; yet after, when their Turns come, every of them may have a *Scire facias* upon this Partition against the (d) Stranger when his Turn cometh, to shew wherefore he should not present, notwithstanding the Usurpation aforesaid. But otherwise it seemeth it is if the Partition be of Record, then they shall be put to their Writ of Right by Reason of this Usurpation.

16 H. 7, 8,  
&c.

## 2

## If

(a) *Note*; In such Case the Profits are to the Prior, and yet the Freehold is in the Abbot. 20 E. 3. *Non-ability*. 9. 14 H. 4. 10. adjudged.

(b) See 13 E. 3. *Scire facias* 118. Where the Conuzee of a Fine of an Advowson brought a *Scire facias* at the next Avoidance against the Heir of the Conuzor, and held good without shewing any Presentment.

(c) He shall have a *Scire facias* against the Heir at the next Avoidance. 39 E. 3. 25. But the Heir shall not have a *Scire fa-*

*cias* on a Recovery in a *Quare Impedit*. 9 H. 6. 57. a. because in the *Quare Impedit* the Presentment only is recoverable, and not the Advowson.

(d) Yet see the contrary 33. E. 3. *Quare Impedit* 196. Which seems not to be Law; for there it was brought against an Estranger, and held, That though by such Usurpation he put the one Coparcener (whose Turn it was) out of Possession; yet it did not put the other out of Possession. See 43 E. 3. 15. 22 E. 4. 9.



- D** If Coparceners make Composition to present by Turns, (a) and a Stranger doth usurp, and presenteth in the Turn of one of them, yet if they will they may join in a *Quare Impedit* against the Stranger, notwithstanding the Composition. And after Composition to present by Turns, if they do present in common, they may well so do. But it seemeth by that, that the Composition is waved; for if Coparceners (where one is within Age) make Composition to present by Turns, and at full Age they present contrary to this Partition, these Presentments shall avoid the Partition made before.
- E** If the eldest Son by the first *Venter* present, and dieth without Heir, and afterwards the Church becomes void, the younger by the second *Venter* shall not present, nor have this Advowson. But *Devon* saith, If a Man hath two Daughters by divers *Venters*, and they enter and make Partition to present by Turns, and one dieth without Heir, the other Sister shall be her Heir: *Quod fuit concessum*. But after the Partition, if one Sister hath presented, and afterwards dieth without Heir, it seemeth her Sister of the Half-blood shall not be Heir unto her.
- F** (b) If a Man be disseised of a Manor unto which an Advowson is appendant, and the Disseisor suffer an Usurpation by a Stranger unto the Advowson, and afterwards the Disseisee doth re-enter into the Manor; he shall present unto the Advowson when it doth become void, notwithstanding such Usurpation.

*Spoliation.*

- G** There is a Manner of Suit called *Spoliation*, for the Fruits of a Church, or for the Church it self, which is to be sued in the Spiritual Court, and not in the Temporal Court; and therefore there is no Writ thereof in the Register. But it is good to be known what Person shall have that Suit, and against what Person it will lie, and for what Thing he shall sue, and when he shall sue, and in what Court.
- H** *Spoliation* properly lieth for an Incumbent against another Incumbent, where the Right of the Patronage doth not come in Debate: As if a Parson be created Bishop, and hath a Dispensation to hold (c) his Rectory, and afterwards the Patron doth present another Incumbent, who is instituted and inducted; now the Bishop shall have a *Spoliation* against that Incumbent in the Spiritual Court, because he claimeth by one Patron, and the Right of the Patronage doth not come in Debate.
- And so if a Parson do accept of another Benefice, for which the Patron presents another Clerk, who is instituted and inducted; now one of them may sue a *Spoliation* against the other, and then it shall come in Debate whether he hath Plurality or not. But if a Patron do present a Clerk

(a) Note; They may wave the Partition of the Advowson and the Allotment thereon, and present by a new Partition. 21 E. 3. 31. 13 E. 3. *Qua. Imp.* 58. 33 E. 3. *Qua. Imp.* 196. by *Skippw.*

(b) See 24 H. 6. 16. 33 H. 3. 33; 3 H. 4. 7. 8. See also 8 H. 6. 17. a. 14 H. 6. 15. And so it is if a Disseisor has presented.

(c) *Scil.* By Force of his former Title, and not in *Commendam*.

16 H. 8. 3. Clerk unto an Advowson, who is instituted and inducted, and afterwards another Man doth present another Clerk to the same Advowson, who is also instituted and inducted; there one of them shall not have a *Spoliation* against the other, if he disturb him of the Church, or to take the Fruits thereof, because the Right of the Patronage doth come in Debate in the Spiritual Court, which of the Patrons hath a Right for to present: And therefore in that Case, if one of them sue a *Spoliation* against the other, he shall have a Prohibition unto the Spiritual Court, and no Consultation shall be granted for the Cause before said.

See after 51.  
1.

Post. 37. C.

38 H. 6. 19.  
Markham.  
26 H. 8. 3.  
22 H. 6. 27.

And if one Clerk without any Presentation, Institution, or Induction, do cast another Parson out of his Rectory, and taketh the Profits thereof, the Parson shall not have a *Spoliation* against him, but an Action of Trespass; or an Assize of *Novel disseisin*; for *Spoliation* doth not lie, if not against him who cometh to the Possession of a Benefice, or unto the Fruits thereof, by the Course of the Spiritual Law, *scil.* by Institution, &c. so that he have Colour to have it, and to be Parson by the Spiritual Law.

So if a Prebend happen void, and the Bishop collate thereunto, and before Induction the Bishop die, and the Temporalities come unto the King, and afterwards he is inducted, and afterwards the King giveth the same by his Letters Patents unto another Clerk, who is instituted and inducted; the first Clerk shall have a *Spoliation* in the Spiritual Court against the Presentee of the King, because the King ought to have removed him by *Quare Impedit*, and not to have collated as he did. And there the Patronage doth come in Debate.

[37.]  
M. 44. E. 3.  
33. *Quare*  
*Impedit* 4.

If an Abbot have a Manor unto which an Advowson is appendant in Fee, and he doth appropriate the Advowson to him and his Successors, and afterwards leaseth the Manor for one thousand Years, and also the Advowson, and the Lessee makes an Union of the Parsonage and the Vicarage, and presents the Vicar unto the Ordinary as Parson, &c. by Reason whereof the Abbot sueth a *Spoliation* against the Vicar, and the Vicar sueth a Prohibition; the Abbot shall not have a Consultation upon the Matter shewed. By which it appeareth, that a *Spoliation* doth not lie for the Abbot in this Case; for that the Right of the Patronage doth not come in Debate.

38 H. 6. 19,  
20, 28.

And so if an Abbot be Parson imparsoned, and a Stranger present his Clerk to that Advowson, who is instituted and inducted; the Abbot shall not have a *Spoliation* against the Clerk, but an Action of Trespass or Assize, if he be ousted; because the Right of the Parsonage is to be tried.

And if a Clerk obtain a Benefice by Provision, for which Cause the King is to have the Presentment for that Time, because the very Patron did not present within the Time limited him by the Statute of 25 E. 3. and the King presents to the Church his Clerk to the Ordinary; who is instituted, and before Induction takes the Profits; he who is in by Provision shall not have a *Spoliation* against him, because he doth not come to the Possession of the Church by the Spiritual Law, but as an Intruder and Trespassor. But if the Presentee of the King were inducted, then there is no Remedy for him who hath the Benefice by Provision.

A Clerk



**D** A Clerk had a Collation by the King unto a Chapel, and was put into Possession by the Sheriff, and afterwards the Clerk was ousted by a Prior, &c. in that Case he shall not have a *Spoliation*, but an *Affise* or *Trespafs*, &c.

**E** But it appeareth by the Register, that one Parson shall have a *Spoliation* against another Parson, which have divers Patrons, &c. if he be spoiled of any Tithes or Profits appertaining to his Church, which do not amount to the fourth Part of the Value of the Church, as before is said. But if they do amount unto the fourth Part of the Church, then one Parson shall not have a *Spoliation* against another Parson, if they claim not of one Patronage, so that the Title of the Patronage doth not come in Debate; and then he shall have a *Spoliation*; and if the other sue a Prohibition, &c. he shall have a Consultation.

*Ne admittas.*

**F** **T**HIS Writ of *Ne admittas* lieth for the Plaintiff in a *Quare Impedit*: And the same is where one hath an Action (a) depending in the Common Pleas of *Darrein Presentment*, or of *Quare Impedit*, and he supposeth that the Bishop will admit the Clerk of the Defendant pendant the Plea betwixt them; and he may sue this Writ directed to the Bishop. And this Writ ought to be sued within the six Months after the Avoidance; for after the six Months he shall not have this Writ, because that then the Bishop may present for Lapse; and therefore it is in vain then for to sue this Writ, because that the Title to present is then devolved unto the Bishop: But the King may sue this Writ after the six Months, where he hath a *Quare Impedit* depending, or *Affise de Darrien Presentment*, because that *Nullum tempus occurrit Regi*.

But there is a Rule in the Register, thus, *Notandum est, quando Rex præsentat ut in jure Coronæ, tunc incurrit ei tempus*. But that is not Law at this Day.

And the Writ of *Ne admittas* for the King is such:

**G** *Rex venerabili in Christo Patri W. eadem gratia Winton', Episc', salutem. Prohibemus vobis, ne admittatis Personam ad Ecclesiam de I. quæ vocat, ut dicitur, & de cujus Advocation' content' mota est in Curia nostra inter nos & A. Or thus, Inter A. & B. donec discussum fuerit in eadem Curia, utrum*

33 E.3. *Qua.*  
Imp. 194.  
Note; In Marrow's Reading it is holden that the six Months shall not be accounted by 28 Days, but according to the Kalender-Months.

(a) In *Darrein Presentment* the Plaintiff recovered, and the Defendant brought a Writ of Error, and prayed a *Ne admittas* to the Bishop: But it was not granted. 17 E. 3. 5.

Note; In a *Quare Impedit* the Case was, A. presented to the Archdeacon of Richmond, who is the Ordinary there, and B. procured a *Ne admittas* to the Archdeacon, and especially to the Bishop, who is his Superior; after which the Bishop prayed A. to appeal to him, who does so accordingly; and he inquires by a *Fure patronatus*, and

finds A. to be Patron, and thereupon admits his Clerk. And it seemed, 1. That the *Ne admittas* had made the Archdeacon a Disturber if he had admitted, notwithstanding the *Fure patronatus* found for A. 2. That the *Ne admittas* to the Bishop before the Appeal is nothing to the Purpose. 3. That the Request to the Party by the Bishop to appeal to him made him a Disturber, (*Quare hoc*) notwithstanding the Finding in the *Fure patronatus*.

*trum ad nos an ad præf'. A. Or thus, In eadem Curia ad quem eorum pertineat ejusdem Ecclesiæ Advocat': Or thus, Inter nos, ratione Abbatix de S. vacantis, & in manu nostra existentis, & H. Linc' Episc', donec discussum fuerit in eadem Curia nostra, utrum ad nos ratione Vacationis præd', an ad præfat' Episc' pertineat ejusdem Ecclesiæ Advocat'.*

21 H. 6. 45.

2 E. 4. 11.

And it seemeth that the Defendant may sue this Writ as well as the H Plaintiff, if the Defendant do suppose that the Bishop will admit the Clerk of the Plaintiff pendant the Writ. And this Writ of *Ne admittas* doth not lie, if the Plea be not depending in the King's Court by *Quare Impedit*, or *Affise of Darrein Presentment*. And therefore there is a Writ in the Register directed unto the Chief Justice of the Common Pleas, to certify the King in the Chancery, if there be any Pleas depending before him and his Companions by Writ betwixt such and such Persons, &c. And therefore it seemeth the Writ of *Ne admittas* shall not be granted, before the King be certified in the Chancery, that such Pleas of *Quare Impedit* or *Darrein Presentment* be there depending in the Common Pleas. But yet the Writ of *Ne admittas* may be granted out of the Chancery, directed unto the Bishop, that he do not admit, &c. before the King be certified, in the Chancery, that such Plea of *Quare Impedit*, or *Darrein Presentment* is depending in the Common Pleas, then the Party grieved may require the Chief Justice to certify the King in his Chancery, that no such Plea is depending there, and thereupon the Party grieved shall have such Writ:

[38].

*Rex venerabili in Christo Patri, &c. Licet nos per Breve nostrum vobis prohibuimus, ne admitteretis Personam ad Ecclesiam de I. [ut in Brevi de Ne admittas] quia tamen per certificationem dilect', &c. I. de S. nobis constat, quod nullum placitum pendet in Curia præd' coram ipso & sociis suis Justic' nostris de Banco inter nos & præf' W. de Advocatione præd', Vobis mandamus, quod id quod ad Offic' vestrum in hac parte noveritis pertinere, libere executiatis, Prohibitione nostra præd' non obstante. Teste, &c.*

And when the Bishop himself is Party and Disturber, then the Form A of the Writ of *Ne admittas* is as aforesaid; *Prohibemus vobis, ne admittatis. Yet the Form of the Writ used to be, Prohibemus vobis, ne conferatis Clericum Ecclesiæ, &c. quæ vacat, &c.*

*Breve*



*Breve Episcopo ad admittendum Clericum. \**

**B** IF a Man do recover his Presentation in the Common Pleas against the Bishop, then he may have a Writ to the same Bishop to admit his Clerk, or unto the Metropolitan; and the Writ shall be such:

*Rex venerabili in Christo Patri, &c. Cum Prior de I. &c. in Curia nostra recuperasset versus nos Præsentationem suam ad Vicariam de W. Vobis mandamus, quod ad præsentac' ipsius Prioris ad præd' Vicariam idoneam Personam admittatis, &c.*

**C** And if a Man recover against another than the Bishop, then the Writ which shall be made to the Bishop, shall be thus:

*Rex, &c. Cum Prior, &c. in Curia nostra, &c. recuperasset versus I. P. &c. Vobis mandamus, quod non obstante Reclam' præd' I. P. ad Præsentac' præd' Prioris, &c. idoneam Personam admittatis, &c.* And upon that he shall have an *Alias* and a *Pluries*, if the Bishop do not execute the Writ, and an Attachment against the Bishop; if need be.

shall have a Writ to the Bishop: *Contr.* in Disclaim in a Writ of Right of Advowson. *vor* 78. The Reason is, because he cannot remove his Clerk after the six Months past.

**D** But if the King do recover in the Common Pleas any Prebendary, or Sub-deanery, or Dignity against the Bishop, and giveth the same by his Letters Patent unto another Clerk; the Clerk shall shew the Letters Patent in the Common Pleas, and thereupon shall have a Writ unto the Bishop to admit him, and to induct him. And if the Clerk die before he be admitted and inducted, and the King giveth the same by other Letters Patent unto another Clerk; that Clerk shall have a Writ out of the Chancery, directed unto the Justices of the Common Pleas, reciting the Recovery, and how that the other Clerk died before he was admitted, and how that he hath granted the same to this Clerk by his Letters Patent, commanding the Justices, that they send another Writ to the Bishop, that he admit this Clerk, notwithstanding the King's Collation before made unto the other Clerk.

N

(a) If

\* (*W. W.*) If one pleads in Abatement of the Writ, and does not make Title, he shall not have a Writ to the Bishop, &c. held by the Justices, 43 E. 3. 25.

(*M. H.*) Note; This Writ is expressly judicial, and therefore shall issue out of the Place where the Record is, if Judgment be given at the *Nisi prius*, the Justices of *Nisi prius* shall award the Writ to the Bishop: (Yet it seems this Writ is not return-

able.) And when it appears that the Record is sent into B. C. it shall issue from thence. *Dyer* 194.

Note; In a *Quare Impedit* against the Archbishop of York, if he be found a Disturber, the Writ shall issue to the Archbishop of Canterbury to admit the Clerk; *per Cur'. Dyer* 327, 328. See *Dyer* 76, 77. 19 E. 3. *Quare Impedit* 153.

7 H. 8. 32.  
8 H. 4. 22.  
A Writ shall issue to the Metropolitan, if the Bishop be Party. *Quare*, for the Bishop did disclaim as Patron in 8 H. 4.

In a *Quare Impedit* the Defendant disclaims, there the Plaintiff

6 E. 3. 7. *Er-*

11 H. 4. 71.  
Hank. and  
Hill.  
21 E. 4. 3.

(a) In a *Quare Impedit* betwixt two Strangers, if there doth appear E to the Court a Title for the King, they shall award a Writ unto the Bishop for the King.

14 H. 4. 11.  
Hankford.  
31 H. 6. 15.  
contr. where  
there is fault  
in the Count.

(b) If a Man do recover an Advowson, and the six Months pass, F yet if the Church be void, the Patron may pray a Writ unto the Bishop, and shall have it; and if the Church be void when the Writ cometh to the Bishop, (c) the Bishop is bound to admit his Clerk. And in Reason the same Law is, if the Patron after the six Months present unto the Bishop, if the Church be then void, the Bishop is bound to admit his Clerk.

(d) And a *Quare Impedit* shall be sued against a Sub-Prior, &c. for G Disturbance of the Patron. *Trinit.* 31 E. 1.

7 H. 6. 15.  
per Curiam,  
contra, if  
the Patron  
had appear-  
ed, and the  
Incumbent  
made Default,  
in 7 H. 6. 37.

(e) Where the Writ abateth for Form or false Latin, the Defendant H shall not have a Writ to the Bishop. If the Patron who is Defendant make Default at the Distress, and the Incumbent abate the Writ by Plea, a Writ unto the Bishop shall not be awarded for the Patron, because he made Default.

made Default, in 7 H. 6. 37. 14 H. 4. 16. upon Pleas of the Incumbent, a Writ awarded to the Bishop.

10 H. 6. 4. f.

(f) In a *Quare Impedit* against the Bishop and others, all made Default I but the Bishop, and the Plaintiff had not a Writ unto the Bishop against the others, until he had counted against the Bishop.

33 H. 6. i.  
22 H. 6. 44.  
1 H. 7. 13.

(g) If the Plaintiff be Non-suit, the Defendant shall not have a Writ K unto the Bishop, before he hath made Title to the Advowson.

31 H. 6. 14. 38 H. 6. 14. 34 H. 6. 44. 11 H. 6. 8. Note; And there the Writ was brought by two Coparceners against the third, and others.

Wint. 9 H. 6.  
16. per Cur-  
iam; the  
Plaintiff  
shall have a  
Writ to the Bishop upon insufficient Plea. 21 H. 6. 36. Aid. 33 H. 6. 1.

(h) Where the Defendant claimeth the Advowson as Parson impar- L sonee, although it be found for the Defendant, he shall not have a Writ to the Bishop.

### (a) Where

(a) See accordant 21 E. 4. 3 h. per Choke. 11 H. 4. 71. per Hankf. and so it shall issue if it be found against the King in a *Quare Impedit*; and yet if the Right appears for the King on a special Verdict, he shall not have a Writ to the Bishop *Rex versus Episc. Roffen.* See 4 Eliz. 243. 16 H. 7. 12. F. Brief al Evesque 13. Bro. 86. 44 E. 3. 10. *Stamf.* 95. a.

Note; On this Writ there lies an *Alias*, *Pluries* and *Attachment*, and thereon the Parties shall plead as in a *Non admittit*. Q. 121.

(b) *Ante B.* and 35. 11 H. 4. 80.

(c) *Dr. and Stud.* 125. 13 E. 4. 3.

(d) 14 H. 4. 11.

(e) *Vide M. infra*, and 13 H. 4. 7.

(f) *Vide* 10 H. 6. 4. 11 H. 6. 8. 22 H. 6. 44. 26 H. 6.

(g) See 2 H. 6. 5. 26 H. 6. & *infra* N.

(h) See a Writ to the Bishop by the Defendant, where the Plaintiff had discontinued his Suit, as if he be *Effined*, where he had an Attorney, &c. 14 H. 4. 12. The Writ went to the Bishop on a Title made where the Writ abated. 9 H. 5. 11. If the Defendant says he has (no) Title to the Church within the same Bishoprick, he may have a Writ to the Bishop. *Quare.* 8 H. 6. 37. 9 H. 6. 17. A Writ went to the Bishop on a Title made for the Defendant, where the Writ abated. 11 H. 6. 53. 31 H. 6. 25.



- M (a) Where the Writ abateth for *Misnom*, or for Insufficiency, the Defendant shall not have a Writ to the Bishop.
- N (b) If the Defendant do not appear at the Distress returned against him, the Plaintiff shall have a Writ to the Bishop, without (c) making Title. *Vide supra* K.
- O If the Sheriff return upon a *Quare Impedit, quod querens non invenit Plcg*, then the Plaintiff may find Pledges in the Common Pleas, and shall have a new *Quare Impedit*, in the Common Pleas; and if the Sheriff return upon that Writ *tarde*, and the Defendant appear, and the Plaintiff be called and appeareth not, the Defendant shall not have a Writ to the Bishop, because that no Writ is served against the Defendant. 2 H. 5. 3.
- P Where the Plaintiff recovereth by Verdict in a *Quare Impedit*, and it is found by the same Verdict that the six Months are past, and that the Metropolitan hath presented, whereas the Ordinary ought to have presented, &c. and that the Year is now past, &c. yet the Plaintiff shall have a Writ to the Bishop. See 38 E. 3. 12. 11 H. 4. 80.
- Q If a Man recover against a Bishop, he may have a Writ to the same (d) Bishop, or unto his Vicar-general, if he be out of the Realm, or unto the Metropolitan. 7 H. 4. 37.
- R A Man sued divers *Quare Impedit*s against the Bishop, and he was Non-suit in all but one Writ; the Defendant had not a Writ to the Bishop until that Writ was determined. 12 R. 2.
- S (e) In a *Quare Impedit* the Defendant pleaded to Issue, and after made Default, and a Writ was awarded unto the Bishop for the Plaintiff. 2 H. 4. 1.
- T (e) At the *Distingas* returned against the Defendant, he comes, and hath Day by the Prayer of the Parties, and afterward makes Default; the Plaintiff shall not have a Writ to the Bishop, but a new *Distingas*. *Vide supra* N. [39.]

N 2

(a) In

(a) *Vide supra* H. 21 H. 6. 56. 11 H. 6. 3. Where it shall abate for false Latin, see 14 H. 4. 11. 3 H. 6. 3. 13 H. 6. 15.

(b) *Vide supra* H. 21 H. 6. 56. 11 H. 6. 3. 27 H. 6. 12.

But if he appears at the Grand Distress, and after makes Default, a *Distingas* shall issue, and then a Writ to the Bishop. 13 E. 3. *Brief al Evesque* 19. and altho' *nihil* be returned on every Part of the Process, viz. on the Summons, Attachment, and Distress, yet the Plaintiff shall have a Writ to the Bishop. 12 H. 4. 4. 21 H. 6. 56. 11 H. 6. 3.

(c) And so have a Writ of Inquiry of Damages. 24 E. 3. 37. yet See 12 H. 4. where no Writ shall issue.

(d) See 16 E. 3. *Quare non admist* 3. But if he has once a Writ to the Metropolitan, he shall not afterwards resort to

have a Writ to the Bishop, or to the Bishop's Vicar, if he be out of the Realm. 38 E. 3. 12. but in that Case he has a *Sicut alias* to the Metropolitan, and yet *Note*; the Bishop was never found a Disturber.

See 38 E. 3. 22. The Metropolitan returned, that it was out of his Jurisdiction, and now the Plaintiff prayed a Writ to the Vicar of the Bishop, for that he was out of the Realm and could not have it, because it did not so appear by the Certificate.

(e) *Note*; The Defendant came at the Grand Distress, and pleaded to the Inquest. *Contra*, where he comes not at the *Pone per vadios*, &c. 16 E. 3. *Brief al Evesque* 18. See 8 E. 2. *Quare Impedit* 168. 16 E. 3. pl. 17. 13 E. 3. pl. 19. *Brief al Evesque* 19. See 2 H. 4. 1. accordant to the Diversity.

(a) In a *Quare Impedit*, the Defendant maketh Title for himself and others, and afterwards the Plaintiff is Non-suit; a Writ to the Bishop shall be awarded for the Defendant only, and not for the others.

14 H. 7. 19.  
and 7 H. 6.  
15.

(b) At the Distress returned against two, one appeareth, and the other maketh Default; the Plaintiff shall have a Writ to the Bishop (c) against him who made Default; and yet it may be that the other Defendant may bar the Plaintiff; and it is so used at this Day: But the contrary was adjudged. *H. 7. E. 3.* for the Cause before said.

13 E. 3. pl.  
20.

In a *Darrein Presentment* betwixt two Strangers, the Assise found a Title for another Stranger; who was not Party to the Writ; he shall have a Writ (d) awarded to the Bishop for him, although he were not Party to the Writ, because that the Writ is, *Quis advocatus ult' præsentaverit, &c.*

10 E. 3. 19.

Where a Man hath a *Quare Impedit* against one, and the Defendant hath a *Darrein Presentment* against the Plaintiff, and recovereth in the *Darrein Presentment*, and the Plaintiff is Non-suit in the *Quare Impedit*, the Defendant shall have two Judgments against the Plaintiff, to have a Writ unto the Bishop in both Actions; and two Writs shall be awarded to enquire of the Damages; but he shall not render double Damages for one Disturbance.

When a Man sueth a *Quare Impedit* against another, and after pendant the Suit he sueth *Ne admittas* to the Bishop, &c. and afterwards they agree to present in common by turns to that Advowson; then he shall have a special Writ out of the Chancery unto the Bishop, to admit him who ought, by the Accord and Composition, to present at the first Turn to that Avoidance. But first the King ought to send a *Certiorari* unto the Justices of the Common Pleas, to certify in the Chancery of the Accord there; and upon that Certificate the King shall send his Writ unto the Bishop, to admit his Clerk who by the Accord ought to have the first Presentment and Turn. And the Form of the Writ in the Register is such:

*Rex venerabili, &c. Cum nuper vobis per Breve nostrum prohibuerimus, ne admitteretis Personam, &c. ejusdem tertie partis Advocac' ac postmodum ad prosecutionem ipsorum E. & M. nobis suggerent' inter eos concordatum fuisse sub hac forma, quod præd' E. hac vice præsentaret Clericum suum ad dict'*

(a) See 13 E. 3. Brief al Evesque 25. accordant. See also for this, 11 H. 6. 8. A. B. and C. Parceners brought a *Quare Impedit* against C. who severed, and afterwards A. and B. were Nonsuited; C. shall not have a Writ to the Bishop without Title shewn, and yet on the Title shewn, the Title would appear for the Plaintiff. See 13 E. 3. pl. 20. and 25.

(b) See 13 E. 3. pl. 21. and ante.

(c) See accordant 13 E. 3. Brief al Evesque 21. L.b. Entry. *Quare Impedit* in Judgment 4. f.l. 507. But a Cesset Executio quoad Breve, &c. quousque. Vide contra, 7 E. 3. 4. (Expressly) in a Writ against the

Bishop and others: Where the Bishop disclaims, the Plaintiff shall have a Writ to the Bishop; sed cesset Executio quousque placitum, &c. See 17 E. 3. Brev. al Evesque 58. If the King brings a *Quare Impedit* against B. and another *Quare Impedit* against B. and C. and B. comes in, et non potest dedicere, the first Writ to the Bishop shall proceed for the King notwithstanding; for it is an Original.

(d) See accordant Bracton 248. where the Assise is taken per modum Assise, and not per modum Furata. See also accordant 13 E. 3. Brev. al Evesque 20. by Aldr. and 17 E. 3. 22. by Wilby.



dict' tertiam partem, & prædict' M. in proxim' Vacation' sequen' Clericum suum præsentabit, sicut per quædam scripta indentata inter eos confecta, & sigillis suis consign', & coram nobis in Cancellaria nostra ostensa, plene liquet; ipsosque penes vos prosecut' fuisse, petend' cum instantia, ut Clericum ipsius E. hac vice ad dictam tertiam partem admitteretis, juxta formam concordie prædict' Vos tamen asserent' manus vestras pretextu Prohibitionis nostræ prædict' ligatas Clericum ipsius E. admittere recusasse; & nobis supplicant', ut sibi, ne collatio tertiæ partis præd' ad vos per Lapsum temporis, quæ in proximo, ut dicitur, imminebit, hac vice devolvatur, velimus de congrua appositione remedii in hac parte facer' provideri; mandaverimus dilecto & fideli nostro R. de N. quod ipse cognitiones quas præfati E. & M. coram ipso facere velint, utrum, viz. ipsi super jure Præsentandi ad tertiam partem concordati essent in forma præd', & si præd' M. vellet quod Clericus per ipsum E. ad eand' 3. partem præsentatus hac vice admitteret' ad eandem, reciperet, & si dicta Scripta essent Facta ipsorum E. & M. & nos inde in Cancellaria nostra sub sigillo vestro distincte & aperte redderet certiores: Et quia præf' R. nos ad mandatum nostrum certificavit, quod Concord' est inter præf' E. & M. quod præd' E. hac instante Vacatione præsentabit Clericum suum ad dictam tertiam partem, & præd' M. in proxim' Vacatione sequen', & sic præd' E. & M. & hæred' sui ad tertiam partem præd' alternatim imperpetuum præsentabunt; & quod ad Conventionem illam firmiter observand' Scripta præd' inter partes præd' sunt confecta: Vobis mandamus, quod idoneam Personam ad præd' tertiam partem ad præsentat' præfat' E. hac vice admittatis, & ulterius quod vestro incumbit officio in hac parte (Prohibitione nostra præd' non obstante.) Teste, &c.

G (a) By this Writ it seemeth a Man shall have a *Quare Impedit* quod permittat ipsum præsentare ad tertiam partem Ecclesiæ; and it seemeth to stand with Reason; for a Consolidation may be made of three Advowsons, and every Patron to present by Turn, and then every one hath Right but to a third Part. 40 E. 3. 28.  
50 E. 3. 26.  
31 H. 6. 24.

## Prohibition and Inhibition.

H THERE are divers Manners of Prohibitions and Inhibitions, and they may be directed as well unto the Temporal Court as unto the Spiritual Court. And one Writ in the Register is, where a Man sueth a *Præcipe in capite* against another in the Common Pleas, of Lands or Tenements which are not holden of the King, but of another Lord; then the Lord of whom the Lands are so holden may sue this Writ directed to the Justices of the Common Pleas, commanding them that if it do appear unto them that the Lands are not holden of the King, &c.

(a) See the Writ in Case of a Consolidation, where each Party has presented by Turns; *Quod permittat eum præsentare ad Ecclesiam*, Dyer 259. and 78. Note; 'Tis there held, that in this Case they are not Moie-

ties, but each has the Entirety in his Turn. But it is otherwise of a Composition between Parceners. 5 Co. 102. *Windsor's Case*.

[40.]

&c. but immediately of another, that they do not (a) meddle with the Conusance of that Plea, but that they bid the Party sue his Writ of Right Patent, *si sibi viderit expedire*. And in a Writ of Right, if the Tenant vouch a Foreigner to Warranty, the Tenant shall have a Writ of *Superfedeas* directed to the Bailies of the same Court, to surcease the Plea, until the Warranty be determined; and if the Bailies will not surcease for that Writ, then the Tenant shall have another Writ of Inhibition directed unto the Sheriff, that he go unto the said Court; and to inhibit the Bailies, that they do not proceed in the Plea until the Warranty be determined, &c. And if they will not surcease for that Writ, then the Tenant shall have Attachment against the Bailies, directed unto the Sheriff, returnable in the Common Pleas, or King's Bench.

A Prohibition may be directed unto the Sheriff at the Suit of the A Tenant, that he do not hold Plea in a Writ of Right unless Battel shall be thereupon waged, because that the Tenant hath put himself upon the Grand Assise.

And a Man may have a Writ of Prohibition directed unto the Sheriff, B to go unto the Lord's Court, and to inhibit the Bailies, that they do not hold Plea in the Lord's Court of a House, &c. *inter A. Petentem & B. Tenentem*. And he may have another Writ unto the Sheriff, to prohibit the Lord himself, that he do not hold the Plea, &c.

And also the Tenant may have another Prohibition directed to the C Sheriff, to prohibit the Bailies of the Bishoprick of the Hundred of F. that they do not hold Plea in the said Hundred *inter A. Pet' & B. Ten', de Consuetudinibus & servitiis quæ idem A. de eo exigit de liber' Tenem', quod de eo tenet in I. nisi Duellum inde vadiat' fuerit*; because the said B. hath put himself upon the Grand Assise, &c. And if Tenant by Receipt sue such a Prohibition, the Writ ought to make Mention of the Receipt.

See Articuli Cleri. 83.

Where the Bishop holdeth Plea of an Advowson, or of the fourth D Part, or of the third Part thereof, then the Party shall have a Writ of Prohibition directed unto the Bishop himself, in this Form:

*Rex vener' in Christo Patri A. eadem gratia Episcopo Winton', & ejus Offic' ac eorum Commiss' salutem Prohibemus vobis, ne ten' Placitum in Cur' Christianitat' de Advocat' Ecclesie de N. vel medietat' vel tertiæ partis, vel quartæ partis Ecclesie de N. unde S. & F. querunt' quod R. trahit eos in Placitum coram vobis, &c.* And he may have a Prohibition to the (b) Party himself, *Ne sequatur*, by these Words; *Prohibemus tibi, ne sequaris Placitum in Curia Christianitatis de Advocat', &c. unde C. queritur quod*

(a) Where a Prohibition shall be in Case of an incident Plea, if the Property of Goods comes in Debate on a Plea for a Legacy, Mortuary, &c. as if a Legacy be devised to the Heir of I. S. so that it comes in Debate who is Heir of I. S. yet a Prohibition does not lie. *Contra*, if in a Suit for Tithes, the Bounds of a Parish comes in Debate. *Kelw.* 110.

(b) Note; If the Suit be prohibited by Law, and without Writ, or if by Writ, and not by Law, yet tho' he sues before Attachment, a Prohibition lies. 33 E. 3. Attachment 14. 8 R. 2. *ibid.* 150. See the Writ *contra pacem*, 31 E. 3. Attachment, *Sur prohibition* 8.



*quod tu trahis eum in Cur'*, &c. And he may have an Attachment thereupon against him, if he follow it after the Writ cometh unto him.

E And the King for himself may sue forth this Writ, although the Plea in the Spiritual Court be betwixt two common Persons, because the Suit is in Derogation of his Crown.

F And the King may sue an Attachment upon the same, if they do proceed, &c. And in the Time of Vacation of a Bishoprick, the Prohibition shall be directed unto the Gardian of the Spiritualties, & *ejus*

G *Officiali* & *Commissariis*. And a Prohibition lieth for Chauntries, Chapels, Prebends, and Vicarages, &c.

H (a) If a Man sueth another in the Spiritual Court for a Chattel or Debt, the Defendant shall have a Prohibition, and the Writ shall be *Prohibemus vobis, ne ten' Placitum in Curia Christianitatis de Catallis vel debitis*, &c. And he may have a Writ unto the Party himself, that he shall not sue there, &c. and shall have an Attachment thereupon, if they sue there afterwards, &c. And also the King may sue this Writ, and it may be directed unto the Judge and Party. And the King may have an Attachment upon it.

I (b) If a Man sueth another in the Spiritual Court for a Lay-fee, <sup>15 H. 5. pl.</sup> which is Land or Tenements, or the like, then he shall have a Prohibition, <sup>22.</sup> and the Writ shall be, *Prohibemus vobis, &c. ne teneatis, &c. de Laico feodo Regis in S. unde queritur quod H. trahit eum in Placitum*, &c. And he may have another Writ unto the Party himself, &c. *Ne sequatur*, &c. and he may sue an Attachment upon it; and he may sue an Attachment only against the Party, or against the (c) Judge only, or against both, at the Election of the Party who will sue. And if the Judge do dwell in one County, and the Party in another County, then <sup>9 H. 6. 54.</sup> if he will have an Attachment against both, he must sue forth several <sup>15 H. 5. pl.</sup> Writs. <sup>22.</sup> And so it seemeth if he sue several Prohibitions against them, he ought to sue several Attachments against them, if he will sue both, although they be dwelling in one County.

K And a Man shall have an Attachment upon a Prohibition against the Judge, if he refuse to receive the Prohibition, and to admit of it.

(a) And

(a) In Debt on simple Contract against an Executor, a Prohibition lies, for there is no Remedy for this at Common Law against Executors. 13 H. 4. 5. per *Thorn- ing*. 8 E. 4. 13. per *Catesby*.

(b) But if the Bishop himself sues, the Writ is good, *Ne sequatur*. 28 E. 3. 94. and see there divers join in an Attachment on a Prohibition, as where they are jointly sued, &c. 14 H. 6. 9.

(c) Where there shall be an Attachment against the Judge and Party by a several *Pone per vad.* See 33 E. 3. Brief 912. For the Act of the Judge is depending on the Suit and Act of the Party, and see there an Attachment on a Prohibition against the Plaintiff and the Judge, where the Prohi-

bition was only directed to the Judge, and held by *Newton* not good. For the Plaintiff in the Suit there shall not answer to the Contempt, but only to the Trespas; because no Prohibition was directed to him, and so he cannot be joined in the Action. But *Ascough contra*, that the Law is in it self a Prohibition, and so there needs no Mention of any Prohibition, and therefore the Plaintiff shall answer for the Contempt, as in a *Premunire*, &c. which *North- ton* agreed, had the Prohibition been directed to both of them, and yet this Surmise is not traversable. 19 H. 6. 54. a. b. See accordant of the Matter of the Prohibition, that it is not traversable. 9 H. 6. 61. a. 21 E. 3. 29. a. 38. b.

Vid. 11 H. 4.  
47. by which  
it seemeth  
a Spiritual  
thing. 7 H.  
4. 1.

(a) And a Prohibition lieth, if a Man be sued in the Spiritual Court L for the Collation unto a Grammar School.

If a Man sue for Trespass in the Spiritual Court, the King or the M Party shall have a Prohibition and Attachment, as before is shewed, unto the Judge, or Party, or unto them both.

(b) In some Cases a Man shall have a Prohibition when he is sued in N the Spiritual Court for the Tithes of his Lands. As if a Man be the King's Tenant, and holdeth of him in chief by Knights Service, and is sued in the Spiritual Court for the Tithes of the Demean Lands he shall have a Prohibition, because that these Lands may come into the King's Hands by Reason of Wardship, or by Escheat; and then perhaps the King shall be otherwise charged than he ought to be charged, and therefore the same ought to be tried before the King in his Chancery.

Note; Tithes  
sued for in  
Chancery.

And so, if a Bishop grant unto a Presentee in the Church of *Lincoln* the Tithes of his Demean Lands, to him and his Successors; now if the Presentor be impleaded in the Spiritual Court for these Tithes, the King may grant a Prohibition; and the Form is such:

[41.]

*Rex tali Judic' salutem, &c. Monstravit nobis venerabil' Pater Lincoln' Episcopus, quod cum I. Present' in Ecclesia beatæ Mariæ Lincoln', teneat de dono suo omnes Decim. Dominicarum terrarum suarum vel Dominici sui de N. quas id' Episc' & prædecess' sui Episc' loci prædicti conferr' consueverunt, Prior Sanctæ Katherinæ extra Lincoln' clamans Decimas illas pertinere ad Ecclesiam de B. trahit eum inde in placitum, &c. Et quia præd' Placitum tangit Coronam & dignitatem nostram, præsertim cum Collatio earund' Decimar' ad nos possit devolvi ratione Custodiæ vel Escaet', quia etiam consimiles Decimas conferimus in quibusd' Dominicis, & similit' quamphures Magnates regni nostri in Dominicis suis; vobis prohibemus, &c.*

(c) Also a Man may sue a Prohibition directed unto the Sheriff, that the Sheriff do not suffer the King's Lay Subjects to come to any Place A at the Citation of the Bishop, *ad faciend' aliquas Recognitiones, vel Sacram' præstand', nisi in causis matrimonialibus & Testamentariis.* And the Party may have thereupon an Attachment against the Bishop, if he cite or distrain any one to appear before him to take an Oath at the Will of the Bishop, against the Will of him who is so summoned or cited. And by that it appeareth, that those general Citations which Bishops

(a) A Prohibition was granted to the Spiritual Court of *Exon*, where a Man was libelled against, for teaching School without Leave from the Bishop. *Trin. Nono Anna in Banco Regine.*

(b) See *Rot. Parliament. 8 E. 2. M. 18.* in the Case of the Propriator of *Twineham* Church adjudged *contr.* See *Pasf. 37 Eliz.* C. B. in the Case of Sir Edward *Wingfield.*

(c) See *Rast.* Prohibition pl. 6. in Appeal, a Prohibition formed on *Articulos Cleri*, and there it is *ad aliqua recognit' per Sacramentum faciendum.* Without Doubt this

cannot extend to the Depositions of Witnesses in another Cause of Ecclesiastical Jurisdiction, and by the Recognizances in Debt here mentioned in the following Sections, must be meant according to the Form of the Writ in the Register next ensuing, fol. 36. and in the 5 Writs there following; so it appears by the Writ at large in *Rastal*, that it is intended of an Acknowledgment of a Debt confirmed by an Oath by a voluntary Agreement and Consent of the Lay Gens.



Bishops make to cite Men to appear before them *Pro salute animæ*, without expressing any Cause, are against the Law, and the Party may have an Attachment against the Bishop for the same, and may sue a Prohibition so to do. And if he do express any Cause in the Citation, it seemeth by the Writ before, that it ought to be for some Matrimonial or Testamentary Cause. See 50. N.

**B** If a Man doth acknowledge in the Spiritual Court that he oweth another Man One Hundred Pounds to pay to him at a Day certain, and after doth not pay the same, &c. if he be sued in the Spiritual Court for this Debt, he shall thereupon (a) have a Prohibition: And so if he acknowledge in the Spiritual Court, that he ought to pay to such a one 100 Marks at such a Day, &c. he shall not be sued in the Spiritual Court for that Debt; and if he be, he shall have a Prohibition and Attachment thereupon. But if a Man, by Reason of Marriage, or of a Will, doth acknowledge in the Spiritual Court that he ought to pay 100 Marks, or any other Sum at a certain Day; then if he do not pay it according to his Acknowledgment, he may be sued in the Spiritual Court for the same, and a Prohibition will not lie (b). 8 E. 4. 13. Post. 44. A.

**C** And if a Man do acknowledge in the Spiritual Court to pay a certain Debt at a certain Day, and doth not pay it at the Day, for which the other sueth him in the Spiritual Court, and excommunicateth him there, because he did not pay it at the Day; the other Party shall have a Prohibition against him. Vide 22 A. 10. Thorpe.

**D** If a Man do recover a Debt in the Spiritual Court against another, and after sueth there to have Execution; the Party grieved shall have a Prohibition against the Party and the Judge, and an Attachment upon the same.

**E** If a Man be indebted unto the King, or bounden to render an Account unto him, and after his Executors are sued in the Spiritual Court for a Debt which doth not concern Matrimony or Testament; his Executors shall have a Prohibition against the Judge, &c. rehearsing the Special Matter, &c. 8 E. 4. 13. Post. 43. K.

**F** Where an Abbot, or Bishop, or other Person whatsoever sueth in the Spiritual Court, because he taketh Toll, or other Composition or Custom of his Tenants, &c. there the Party grieved shall have a Prohibition against him; or the King may sue this Prohibition and Attachment thereupon.

**G** Where a Man granteth Parcel of his Manor to another Parson in Fee, to be quit of Tithes by Deed, and the Parson with the Assent of the Ordinary grants unto him, that he shall be quit of Tithes of his Manor for this Parcel of Land, &c. if he or his Assignee be afterwards impleaded,

O

(a) See the foregoing Note, and 12 H. 7. 22. 20 E. 4. 10. 2 H. 4. 10. 11 H. 4. 88. 38 H. 6. 29. But by the Opinion of *Spelman* the Court shall punish him *ex offi. io.* See the Case 2 H. 4. 10. Where a Vicar was sued before the Pope's Collectors, that he would not sue for an Increase of his Por-

tion, and thereupon (being sued for this before the Pope's Collectors) a Prohibition was awarded. Note; The Bond was to pay at the Pope's Chamber.

(b) So if he promises the Payment of Tithes. 20 E. 4. 10

Vide Br. Pre-  
scription 603.

ed in the Spiritual Court for Tithes of his Manor, or any Parcel of his Manor, he or his Assignee shall have a Prohibition upon that Deed; and if the Deed were made before Time of (a) Memory, and so had continued to be quitted of Tithes of his Manor, he shall have a Prohibition, if he be impleaded for the Tithes of that Manor, or any Parcel thereof, upon the Matter shewed.

If a Man sue any Prohibition to any Spiritual Court, and the Judges H will not receive the same, or will not allow it, and because he bringeth the Prohibition, they make a Citation against the Party, to answer before them for the same Cause; now he shall have a new Prohibition upon the Matter directed unto the Judges there, &c. And also he shall have an Attachment thereupon, if they proceed against him in their Court. And it is not material whether the Prohibition were sued legally or erroneously, because he shall not be punished for suing a Prohibition in the King's Court.

A Man deviseth Lands in *London* in Mortmain, and by Reason of this I Devise the Abbot, or he to whom the Devise is made, sueth for these Lands, or for any Parcel thereof, in the Spiritual Court by Colour of the Devise: The Party grieved by this Suit shall have a Prohibition.

If a Man sue another in the King's Court in Trespas for Battery, or K taking of his Goods, and afterwards is Non-suit, and discontinueth the Suit, for which the Defendant sueth him in the Spiritual Court for Defamation, &c. he who hath sued in the Temporal Court shall have a Prohibition against him, and an Attachment thereupon, if he sue again in the Spiritual Court: And also shall have such Prohibition unto the Judge, and Attachment against him, if he hold Plea therein after the Prohibition delivered unto him.

[42.] Where a Composition is made by Deed indented at the Time of the L Avoidance of a Prior, that an Abbot shall nominate six Persons, and that the other shall elect one of them to be Prior unto the Ordinary; now if he who presenteth be sued in the Spiritual Court, because he hath presented one unto the Ordinary for to be Prior, he shall thereupon have a Prohibition against him who sueth there. And if the Sub-prior and Convent sue in the Spiritual Court to avoid such Presentment, he shall have a Prohibition against the Judge, &c.

8 Aff. 28. Br.  
Assise 138.  
6 H. 7. 14.

And also the King may have a Prohibition directed unto the Ordinary, A that he shall not visit the Hospitals which are of the King's Foundation, or of the Foundation of his Predecessors; because that the Chancellor of *England* ought for to visit them and no other. And so is it of the King's or his Progenitors Free Chapels, no Ordinary shall visit the them, but the Chancellor of *England*, &c.

6 H. 7. 14.  
Keble, vide  
8 Aff. pl. 29.  
Br. ff. 13.  
8 E. 3. 69.  
pl. 37.

Where a common Person is the Founder of an Hospital, which is do- B native by his Letters Patent, and doth consist all in Temporalties, if the Ordinary will visit such Hospital, the Founder shall have a Prohibition against him: Or if the Ordinary will cite any of the poor Men to appear

(a) Note; The Consideration is triable, 26 E. 2. Prescript. 52. 15 H. 3. Prohibition although before Time of Memory. See 22.



appear before him for an Hospital Cause, or to remove him, the Founder, or his Heir, shall have a Prohibition. And such Hospital may be appendant unto a Manor, as well as the Advowson of a Church.

C And if a Man recover his Presentation by *Quare Impedit*, and hath his Clerk admitted and instituted, and another Person, who claimeth the Advowson by Provision from the Pope, sueth in the Spiritual Court, for to avoid and remove the other Clerk; the Patron who hath recovered his Presentment, &c. shall have a Prohibition unto the Judge for to surcease, &c. 11 Co. 99.

D So if the King hath Title to present unto an Advowson, by Reason of a Ward who is in the King's Hands, and after the six Months past presenteth his Clerk, who is admitted and instituted, and the Bishop present his Clerk before to the same Church for Lapse, who was admitted and instituted, &c. by Reason whereof the Bishop's Clerk sueth the Clerk, who was presented by the King in the Spiritual Court; the King's Clerk shall have a Prohibition directed unto the Judges, &c. that they shall not proceed in the Plea, &c.

E If a Man sueth a Priest or a Monk, or Canon, or Clerk, in the Temporal Law, in Debt or Trespass, and cause him to be arrested by his Body; if they sue for his Arrest a Citation in the Spiritual Court *de violentia manuum iniectione in Clericum*, the other shall have a Prohibition directed unto the Judge. See the Stat. 9 E. 2. *Articuli Cleri*.

F (a) If two Men are sworn to give Evidence unto a Jury, and do so, for which certain Persons are indicted; if they who are indicted sue them in the Spiritual Court who gave Evidence for Defamation, they shall have a Prohibition.

G Where a Man sueth in the Spiritual Court for Spiritual Causes, and the Defendant purchaseth a Prohibition directed unto the Judges there, and delivers the same, and for so doing the Judges do excommunicate him for the Offence he did to the Church, in bringing a Prohibition to them upon a Spiritual Cause; the Party excommunicate shall have a new Prohibition upon that Matter, commanding them for to revoke the same. For a Man shall not be punished for suing forth Writs in the King's Courts, whether he have Right or Wrong. Co. Lit. 161. a.

H If a Clerk of the Chancery, or any of his Servants, or the Keeper of the Great Seal, or any of his Servants, or the Chancellor, or any of his Servants, commits any Trespass in *London*, or elsewhere, and are sued for this Trespass in *London* before the Mayor or Sheriff for Trespass, they shall have a (b) *Supersedeas* directed unto the Mayor for to surcease, and bid the Party sue in the Chancery, if it be needful for him.

O 2

And

(a) And so it seems if a Feme be sued for Defamation for prosecuting a *Homine Repleg'* for her Husband. 33 E. 3. Brief 912.

(b) But see such *Supersedeas* shall not be allowed after Imparlance, *per Cur'* 9 E. 4. 53. 20 H. 6. 32. a. 22 H. 6. 7. Yet it shall be after Plea pleaded. 11 H. 4. 68. *per Hankford. Contr.* 11 H. 6. 8. a. b. But there the Suit was in C. B. See 16 E. 4. 5. 6. 27 H. 6. 22. & *Dyer* 33, 34 3 H. 6. 20. If a Clerk in

Chancery and his Wife, or other Person be joined in a Suit by Writ of Trespass or Debt C. B. &c. a *Supersedeas* is not allowable for in the Clerk. But if a Clerk of B. R. and another be impleaded in C. B. in Trespass, a *Supersedeas* for one shall be allowed for the others: For the Plaintiff may have his Action against all of them in B. R. 14 H. 4. 27. 22. 34 H. 6. 29. b. 35 H. 6. 20. 20 H. 6. 32. a. 10 E. 4. 4, 5. *Dyer fol. ult. a.*

Vide 4 H. 3.  
Prohib. 15.  
Vid. 43. D.

And there are divers Forms of these Writs in the Register; and one Writ reciteth, that this Custom and Privilege was confirmed by Authority of Parliament. *Anno 18 E. 3.*

11 H. 4. 88.

If a Woman hath Title to sue a *Cui in vita*, and she swear unto the Tenant, that she will not sue the *Cui in vita* against him; if she afterwards sueth forth the Writ, for which the Tenant sueth her in the Spiritual Court for Breach of her Oath, she shall have a Prohibition, because the Oath toucheth a temporal Thing, *viz.* Land.

If two several Patrons present severally to the Bishop, and thereupon one sueth a *Quare Impedit* or a *Darrein Presentment* against the other, and recovereth, and hath his Clerk admitted, for which the other Clerk sueth the Clerk who recovereth by Appeal or otherwise, in the Archbishop's Court, because that he was not admitted at the Presentment of his Patron; the Patron who recovereth shall have a Prohibition directed unto the Archbishop, &c. or against the Clerk that sueth there for that Cause, that he do not sue for that Cause, &c.

And so is it if the Patron be disturbed by the presentment of a Stranger, and the Disturber's Clerk sueth the very Patron's Clerk in the Spiritual Court; or contrary, the Clerk of the rightful Patron sueth the Clerk of the Disturber in the Spiritual Court, he who is grieved shall have a Prohibition.

And if the King do collate unto any Prebendary, or recovereth the Collation unto any Prebendary, and hath his Clerk admitted, and afterwards the Clerk who is vexed sueth in the Spiritual Court, by Means of Appellation, or Commission, or other Cause, by which the Title of the Collation may come in Debate; the King shall have a Prohibition directed unto the Judges where the Suit is, commanding them that they do not proceed. And if the King do recover his Collation or Presentation unto any Church, and after Execution of the Judgment is disturbed by Appeals, or Citations, or other such Means; or if that after the Clerk be inducted, the King's Clerk be vexed by Appeals, or Commissions, or Citations in the Spiritual Court for this Cause; then the King shall have a Writ, directed unto all Sheriffs, Mayors, and other Officers, to take and arrest the Bodies of those who made such Impediments, to disturb the Execution of the Judgment, or of such Presentations or Collations made by the King; and also shall have a Writ of Prohibition unto the Bishops and their Officers, that they do not any thing in Derogation of his Presentment or Collation, or of the Execution of the Judgment given for the King. And also the King may sue such Prohibition directed unto the Party himself who sueth such Appeals, Provocations, Citations, Instruments, or Process, &c. that they do not sue such, or permit such Appellations, Provocations, or Impediments to be. And the King shall have an Attachment upon that directed unto the Sheriff, &c. if the Party follow or suffer such, &c. to be sued contrary to that Prohibition.

[40.]





**A** If the King do recover his Presentment unto a Church, and hath a Writ unto the Bishop, &c. to remove the others (a) Incumbent, for which the Incumbent sueth an Appeal in the Archbishop's Court, &c. by Reason whereof the Archbishop sendeth a Prohibition that he do not admit the King's Clerk pendant the Appeal, &c. then the King shall have a Writ directed unto the Archbishop and his Officers to take off his Inhibition, and that they do nothing, nor suffer any thing to be done by others, in Derogation of the Crown or of the King's Right; and shall have another Writ against the Incumbent, that he follow not such Appeals, Provocations, or other Procefs or Impediments. And also the King may have an Attachment directed unto the Sheriff against such Incumbent, if he go on there after such Prohibition directed unto him.

**B** And it appeareth by the *Register*, that another common person who recovereth his Presentment, or hath Title to present, shall have such Writs of Prohibition unto the Spiritual Judges, or the Party, that they shall not proceed, or pursue such, &c. and also Attachment against them if they do, &c. And where the King's Clerk is in Possession by such Recovery, and is after disturbed by another with Force and Arms, that he cannot take the Tithes and Profits of the Church, he shall then have a special Commission directed unto the Sheriff, and other the King's Officers, to take such Persons, as well within Liberties as without, and to carry them unto the Gaol, there to remain till they have other Command from the King.

**C** And if the King do recover his Presentment, and hath a Writ unto the Bishop, and his Clerk is instituted and inducted; if the Bishop at the Suit of others hath Provocations, or other Instruments, to cite the King's Incumbent to the Court of *Rome*, or elsewhere out of the Kingdom; then the King shall have a Prohibition directed unto the Bishop, that he do not cite, nor cause to be cited, such Incumbent, &c. and the King may have an Attachment upon it, if, &c. And it seems that the King shall have a Prohibition without any Recovery had before, if his Presentee be instituted, &c. And so it seems a common Person shall have and sue such a (b) Prohibition, when the Suit is to try the Title of the Presentment or Collation; yet the Writs in the *Register* are and speak of a Recovery.

**D** If a Man make an Oath to infeoff me before such a Day, &c. if he do not infeoff me, I cannot sue him in the Spiritual Court for Breach of his Oath, because the Thing which is to (c) be done is a Temporal Act, and shall be tried at the Common Law, whether he hath done it

11 H. 4. 83.  
contrary for  
personal  
Things.

4 H. 3. Pro-  
hibition 15.

or See 42 F.

2 E. 4. 10.

(a) And *note*; If the Party be convicted in an Attachment on a Prohibition for the King, and he procures an Appeal, &c. yet he shall not have the Judgment which the Stat. 27 E. 3. c. 1. gives against those who make Default in a *Premunire*; but only That he shall be taken. 30 E. 3. 11. b.

(b) See 22 E. 4. 20. 38 H. 6. 24. 11 H. 4. 88. 12 H. 7. 22.

(c) See 2 H. 4. 10 a. b. accordant; and so 11 H. 4. 88. For by *Hankford*, If it be found by a Jury he shall be condemned and awarded to perform the Oath. *Note* 27 Aff. 70. In a Suit in Court Christian *pro lesione fidei*, they cannot award one to pay the Debr, but only a corporal Penance, which he may commute.

or not; and therefore if he be sued in the Spiritual Court for that Cause, he shall have a Prohibition. And if a Man be sued in the Spiritual Court, and the Judges there will not grant unto the Defendant the Copy of the Libel, then he shall have a Prohibition directed unto them for to surcease, &c. until they have delivered the Copy of the Libel, according unto the Statute made *Anno 2 H. 5.* And also the Defendant may have an Action against them upon the said Statute, if they will not deliver the Copy of the Libel, whether the Cause in the Libel be a Spiritual Cause or not.

(a) If a Man maketh a Devise of Lands or Tenements devisable, the Party to whom the Devise is made shall not sue in the Spiritual Court to have the Lands or Tenements so devised; but if he do, the other Party shall have a Prohibition. But if he deviseth Goods or Chattels Real, as a Term for Years, or a Ward; there he may sue in the Spiritual Court for such Things.

If a Man sueth in the Common Pleas for Trespass, if he sue him in the Spiritual Court for the same Cause, he may (b) shew the Matter in the Common Pleas, and shall have a Prohibition from thence directed to the Judges, &c. And so always when the Matter is depending in the Common Pleas, if he sue for the same Cause in the Spiritual Court, he shall have a Prohibition out of the Common Pleas.

But a Man shall have a Prohibition out of the Chancery or King's Bench upon his Surmise, surmising that he is sued in the Spiritual Court for a Temporal Cause, &c. although he be not sued in the King's Bench, or elsewhere, for that Cause.

If a Man sue a *Quare Impedit*, and deliver it of Record, as he may, and afterward the Defendant, or his Clerk, sue a Citation against the Presentee of the Plaintiff; the Plaintiff in the *Quare Impedit* shall have a Prohibition in the Common Pleas, before the Return of the Writ of *Quare Impedit*, because it appeareth on Record that such a *Quare Impedit* is depending.

If a Parson grant to one by Deed, that he shall be discharged of Tithes of his Lands, and afterwards he sueth in the Spiritual Court for the Tithes, &c. it is said that he shall not have a Prohibition, because he may pretend this Matter in the Spiritual Court, to discharge him of the Tithes. But if it were upon a Composition made before Time of Memory, and now the Parson sueth for the Tithes of those Lands, there he shall have a Prohibition against the Parson, &c. *Quare the Diversity*, for I think he shall have a Prohibition in both Cases. The Case is *M. 8 E. 4. 14.*

If a Man promise one 10*l.* if he will marry his Daughter; if he marry the Daughter, and the other will not pay the Money, he shall not sue for the same in the Spiritual (c) Court. But if he promise one

with

(a) See 22 E. 4. Consultation 5. 8 H. 5. pl. 19. 38 H. 6. 14. 40 E. 3. 36. 13 H. 6. Prohibition 3. ante 31.

(b) See 7 H. 4. 1. *Si vero agatur in Curia Christianitatis tantummodo ex officio*, and the Party has Correction, it seems he shall not

have a Prohibition. *Quare.* See 38 H. 6. 14. *Rast. Entr. pl. 484.* 10 H. 6. 21.

(c) See the Case of *Fosline* and *Shelton*. 4, 5 Ph. & Mar. & 33 E. 3. *Jurisdiction* 25. *Post.* 58. S. 14 E. 4. 6. 17 E. 4. 4. b. 15 E. 4. 32. a.



with his Daughter in Marriage 101. &c. if he doth marry the Daughter, and he do not pay the Money, he may sue in the Spiritual Court for the 101. because it concerneth Matrimony. Which Diversity see in 22 E. 3. lib. Aff. Vide 50 S. 22 Aff. 70. 17 E. 44. 15 H. 3. Prohib. 22. 16 H. 3. Ibid. 24.

B (a) If the Testator charge his Executors to pay his Debts to his Creditors, if they do not pay them, the Creditors may sue in the Spiritual Court; and they shall not have a Prohibition, for that this Charge of the Testator, is as a Devise unto his Creditors: *Quod vide H. 9. E. 3. Prohibition 17.*

C (b) If a Man giveth Goods in Marriage with his Daughter, and afterwards they are divorced; the Wife may sue in the Spiritual Court for the Goods, and no Prohibition will lie thereof. 13 H. 3. Prohib. 21. Vide 139.

D If a Stranger do disturb the Executors to perform the Will, they may sue him in the Spiritual Court, and no Prohibition lieth against them for so doing T. 4. H. 3. Prohibit. 28. acc. F. Prohibition 28.

E If a Man sueth a Prohibition because another draweth him into the Spiritual Court for an Advowson of a Church, &c. upon the Attachment upon the Prohibition sued he may declare, that he did deforce him of great and small Tithes, &c. 4 E. 3. 27. 29. Prohib. 2.

F If one Parson sueth another Parson in the Spiritual Court for Tithes of the Profits arising in one hundred Acres of Lands within the Bounds and Limits of his Parish being, for which the Patron of the other Parson purchaseth an *Indicavit* unto the Spiritual Judge for to surcease, &c. then may the Parson who sueth in the Spiritual Court come into the Chancery, and have a Writ unto the Bishop for to enquire of the Value of the Church, according to the Tax of Tithes now currant, as upon the Value of the Tithes demanded, and to certify the King in the Chancery thereof by Letters under his Seal, with the Writ: And it seemeth he ought so to do before he have a Consultation granted in that Case. Post. 45.

G If a Bishop will cite or compel the King's Chaplains, or the Masters of the Chancery, which are the King's Chaplains, to make their personal Residence upon their Benefices when they are attending in the King's Service, they may have a Prohibition unto the Bishop, &c. and upon the same an *Alias*, *Pluries*, and Attachment. But if they be not attending in the King's Service, then the Ordinary may compel them to make personal Residence upon their Benefices; and the Form of the Writ is such:

*Rex venerabili, &c. Cum Clerici nostri ad faciend' in Beneficiis suis Residentiam personaliter, dum in nostris immorant obsequiis, compellari, alias super hoc molestari seu inquietari non debeant; Nos, ac Progenitores nostri quond' Reges Angl', hujusmodi Libertat' & Privileg' pro Clericis nostris a tempore quo non extat memoria semper hactenus usi sumus, vobis mandamus, quod dilect' Clericum nostrum, Personam Ecclesie de B. &c. quæ per præcept' nostrum in Cancell' nostra nostris jugit' intendit obsequiis, ad personalem Residentiam in Benefic' suo, &c. dum in eisdem obsequiis nostris immorat, nullatenus compellatis, &c.* And

(a) 7 Eliz. 305. Bro. Delt 135. 22 E. 3. (b) 26 H. 8. 7. 13 E. 3. or H. 5. 13. Affize 70.

And if the King's Chaplain be chosen Dean of any Church, which Office requireth personal Attendance and Residence, and the Bishop will compel him to take the Deanery which requireth that personal Residence, by spiritual Censures and Citations, &c. then he shall have a Prohibition unto the Bishop by these Words : *Vobis district' prohibemus, ne ipsum A. ad Residentiam aliquam in Benefic' suo faciend', seu assumend' officium præd', vel aliquod hujusmodi Residentiam requir', dum obsequiis nostris præd' sic intenderit, quoquo modo compellatis; & Sequestr', si quod in fructibus aut aliis bonis Ecclesiæ dicti Clerici nostri per ipsum Episcopum aut suos ea occasione appositum fuer', sine dilatione fac' relaxari, &c.* And so if the Clerk abide in the King's Service in the Company of our beloved and trusty R. of P. in the Parts of Gascony.

And so if the Bishop will amerce the King's Chaplains, and compel them to pay a certain Sum of Money for Non-residence, they shall have a Prohibition.

Vide Stat.

Articuli Cleri,  
cap. 2.

If one sue another out of the Realm for Debt, or other Cause, **H** whereof the King's Court may have Conusance, he shall have a Prohibition against him, and an Attachment upon the same, if, &c. And so if one Clerk sueth another upon the Title of Collation of any Prebendary out of the Realm, &c. he may have this Prohibition : And the King may send a Writ to him who is so sued out of the Realm, commanding him upon Pain of Forfeiture of so much as he may Forfeit, that he go not out of the Realm for to answer thereunto, whereof the Conusance doth appertain unto the King's Court. And also the King may send unto the Prebend, if he be sued out of the Realm for Title of the Prebendary, to prohibit him, upon Pain of Imprisonment, and of Forfeiture of what he may forfeit, that he do not go out of the Realm, nor answer there by his Proctor, or otherwise, &c.

[45.]

And if any Man do purchase from the Court of Rome any Citation **I** against any Clerk or others, directed unto the Archbishop of Canterbury, or unto others, to cite such Persons to appear before the Pope, &c. and to answer for the Collation or Presentation unto any Benefice or Prebendary ; then the King shall send his Writ of Prohibition unto the Archbishop, or other to whom such Process is directed, that they do not cite, &c. and may have another Prohibition to the Party himself, and an Attachment upon the same, &c.

And when a Consultation is once duly granted, then the Court may **A** proceed in the Spiritual Court, notwithstanding that the Party purchase a new Prohibition directed unto them, if the Libel be not changed : *Quod vide* by the Statute of 50 E. 3. c. 4.

Indicavit,  
ante. 44.

The Writ of Prohibition, which is called *Indicavit*, most commonly **B** lieth between four Persons, whereof two are Patrons, and two are Clerks, and properly lieth where one Clerk sueth another in the Spiritual Court for Tithes which do amount unto the fourth Part of the Value of the Church at the least ; for if it doth not amount unto the Value of the fourth Part, but unto the fifth Part, the *Indicavit* doth not lie. And this Writ lieth for the Patron, and that Clerk who is sued in the Spiritual Court : And this Writ may be sued as well against  
the



the Judge as the Party. And the King may sue this Writ where his Clerk is impleaded for Tithes amounting to the Value of the fourth Part of the Church, or of the Church it self. And this Writ of *Indicavit* lieth as well for the Patron, where his Clerk is impleaded for the Advowson it self, or such Vicarage, Prebend, or Chapel, as well as if he were impleaded of the Tithes of the Church, Vicarage, Prebend, or Chapel.

And it appeareth by the Register, the Writ of *Indicavit* which the King shall have where the Clerk is impleaded in the Spiritual Court for Tithes, not making Mention what is the Value of the fourth Part, is such:

*Rex Officiali Episcopi, &c. & ejus Commissariis salutem. Cum A. de B. Persona Ecclesie de W. teneat omnes Decimas provenientes de Marisco, &c. de Advocatione nostra, Abbas de Bello, clamans eas pertinere ad Ecclesiam suam de, &c. trahit eum in Placit', &c. Vobis prohibemus, &c. utrum ad nos an ad præd' Abbat' pertinet earundem Decimarum Advocatio, quia Placita, &c.* And this Writ of *Indicavit* ought to be sued by the Patron before Judgment given in the Spiritual Court, for after Judgment given there, the *Indicavit* is void.

**C** And a Man shall not have an *Indicavit* before the Party in the Spiritual Court hath libelled there against the Defendant; and the Party who sueth the *Indicavit* ought to shew the Copy of the Libel in the Chancery, before he have the *Indicavit*. And when the Party hath libelled in the Spiritual Court, and the Party is put to answer, then it is called and said, that the Suit is contested in the Court of Christianity. 31 H. 6. 15

**D** And *Indicavit* lieth for Tithes and Offerings, if Suit be in the Spiritual Court for them, as well as it lieth of an Advowson; and that for a common Person, as well as for the King. And the Writ of *Indicavit* shall not mention that the Tithes and Offerings which are in Suit do amount unto the fourth Part of the Church, but *Decimas provenientes de centum acris terræ*, or of such a Manor: And if these Tithes be not to the fourth Part of the Value of the Advowson, the other Party may alledge and furnise the same, and have a Consultation. 4 E. 3. 20;  
29. Prohibition 1.

**E** And also *Indicavit* lieth where one Party is Parson Imparsonee, and the Clerk of the other Patron sueth him in the Spiritual Court for Tithes, &c. he may sue the *Indicavit*. And so if an Abbot be Parson Imparsonee of a Church, and another Abbot is Parson Imparsonee of another Advowson, and one sueth the other for Tithes appertaining to his Advowson, amounting unto the fourth Part of a Church, &c. the other shall have the *Indicavit* against him.

And if an Abbot be Parson Imparsonee of an Advowson, and hath a Vicar endowed; then if the Parson be sued in the Spiritual Court for the fourth Part of the Tithes of his Parsonage, he shall have an *Indicavit*. And so if the Vicar be sued for the fourth Part of the Tithes and Offerings of his Vicarage, the Parson, or he who is Patron of the Vicarage, shall have the *Indicavit*, because they are several Advowsons; the Parsonage one, and the Vicarage another; and there may be divers Patrons of

of them. *Quod vide Pasch. 31 II. 6. in Title Indicavit. See West. r. c. 35.*

If Bailiffs, Mayors, or others, who claim Jurisdiction to arrest a Man **E** upon a Plaint before them, or to attach his Goods, &c. do arrest one for Trespass or Contract, who was not within their Jurisdiction, the Party arrested, &c. shall have a Prohibition directed unto them, &c. and the Form is such :

*Rex Ballivis A. de N. salutem. Cum de Communi concilio regni nostri provisum sit, quod non liceat alicui de eod' regno, nisi nobis & ministris nostris specialem auctoritatem ad hoc habentibus, aliquos per Ballivam seu potestatem suam transeuntes attachiar' ad respondendum alicui super contract', conventionibus, seu transgr' aliquibus extra eand' Ball' seu potestat' factis; vobis præcipimus, quod non attachiatis B. ad respondend' alicui coram vobis in Ball' vestra super hujusmodi contractibus, conventionibus, seu transgr', contra formam provision' præd'; & Distinction', si quam inde feceritis, deliberari faciatis, &c.* And if they will not obey the same, he shall have an Attachment against the Bailiffs. And this Writ lieth as well upon Attachment of Goods, as for arresting of the Body.

[46.] If a Woman have Lands which she holdeth in Dower, or of joint **G** Purchase with her Husband, or of her own Inheritance, if the Sheriff have Process out of the Exchequer to levy the Husband's Debts which he oweth unto the King; or if the Sheriff have Process out of another Court to levy Debts due by her Husband to another Person; if the Sheriff will distrain in the Lands which the Wife holdeth, &c. the Wife shall have a Writ unto the Sheriff, that he do not distrain the Wife who holdeth such Lands, in the same Lands, for the Debt of the Husband; and the Form of the Writ is such :

*Rex Vic', &c. Cum secund' Legem & consuetud' regni nostri mulieres in Terris & Tenementis quas tenent in dotem de dono virorum suorum, vel quæ sunt de hæreditate sua, vel quas sibi acquisiverunt, pro debitis virorum suorum reddend' distringi non debeant; ac tu B. quæ fuit uxor A. distring' in Terris & Tenementis suis, quas tenet in dotem ex dono ejusd' A. & etiam quæ fuer' de hæreditate ipsius B. ac ex quæsito ipsius B. sicut ex gravi querela sua accepimus; Tibi præcipimus, quod ipsam B. in Terris & Tenementis suis quas tenet in dotem, vel quæ sunt de hæreditate sua propria, vel ex quæsit' ipsius B. pro debit' præd' A. quondam viri sui, reddend' non distringas, vel distringi fac', contra Legem & consuetud' prædict', & Distinctionem, si quam, &c.*

And there is such a Writ unto the Sheriff, where Process cometh unto the Sheriff out of the Exchequer, to levy the Debts of the Husband, *per summ' Scaccarii, &c.* And in that Case she may sue a Writ unto the Barons of the Exchequer, that they surcease to make out such Process to the Sheriff to distrain the Wife in such Lands, &c. Another Form of Writ unto the Barons of the Exchequer, to surcease for to distrain the Wife, &c. and with a Proviso in the same Writ, that they levy the Debts of the Husband's Executors, or of his Heir, or of the Lands and Tenements which were the Husband's, &c.

And



A And if a Man sue another in the County-Court for Debts (a) or Chattles which do amount to the Sum of 40 s. then the Party shall have a Prohibition against him who is Sheriff, that he shall not hold Plea thereof, and that he tell the Party that he sue in the Common Pleas; and the Writ is such:

*Rex Vic', &c. Cum Placita de catallis & debitis quæ summam quadraginta solidor' attingunt, vel eam excedunt, secundum Legem & consuetud' regni nostri sine Breui nostr' placitari non debeant; ac A. B. de debit' centum solid' in Com' tuo sine Breui nostro implacitavit, ut accepimus: Tibi præcipimus; quod si ita sit, tunc Placito illo in Com' præd' sine Breui nostr' ulterius tenend' superfed' omnino, & præf. A. dicas ex parte nostra, quod Breve nostrum de prædict' debit' versus præd' B. sibi impetret, si sibi viderit expedire. Teste, &c.* And if such Writ be sued in another Court, then the Writ shall be directed unto the Bailiff of the Court, in such Form:

*Rex Ballivis I. de N. vel Ball' suis de N. salutem Cum Placita, &c. [usque ibi, non debeant] ac A. B. de eo, quod idem B. redd' præf. A. catall' ad valentiam decem librar' coram nobis in Curia dicti Dom' vestri de N. vel in Curia nostra de N. sine Breui nostro implacitet, ut accepimus; Vobis præcipimus, quod si ita sit, tunc Placito illo, &c. ut supra.* And if they do not surcease upon this Writ, then he shall have an *Alias* and *Pluries*, and an Attachment against them, and also an Attachment against the Party himself.

And if a Man do owe unto another Man five Marks, and he sue several Plaints for the same in the County-Court, or in any other Court against the Debtor, he shall have a Prohibition thereof, and rehearse the Matter, and that he would defraud the King's Court of it's Jurisdiction, and also the Party of his Answer, &c. commanding them that they do not proceed, &c. and that he command the Party to sue at the Common Law in the King's Court; and if they will not surcease, he shall have an *Alias* and *Pluries*, and Attachment upon the same, &c.

And so it is if a Man will sue in the County-Court a Writ of Covenant or Trespass, unto his Damage of forty Shillings or more, the Party shall have a Prohibition for to surcease, and thereupon an *Alias*, *Pluries* and *Attachment*, &c.

And so if the Executor sueth in the County, or in a Court-Baron, for a Debt of five Marks by divers Plaints, whereas the Debt is upon a Contract, or upon an Obligation; now the Defendant may shew the same, and plead unto the Jurisdiction of the Court, or he may have a Writ of Prohibition directed unto them, that they do surcease, &c. and if he have Judgment in any of Plaints sued for Parcel of the Debt, yet in the Prohibition he may prohibit him in the Plaints which are depending, and that Execution of the Judgment cease for the Residue.

See 15 H. 3,  
Prohibition,  
13 contr.

And also if a Man sue in the County a Plaint of twenty Pounds, and hath Judgment to recover in that Court; yet the Defendant may sue a

P 2

Prohibi-

(a) And so if he split an entire Contract into several Sums under 40 s. See 19 H. 6. 54. it seems the Judgments for such Sums are *coram non Judice*, and void; at least, voidable by False Judgment. *Kelw.* 106. a. See 19 H. 6. 5. a.

Prohibition, commanding the Sheriff and the Suitors that they do not execute the Judgment, although he have before admitted the Jurisdiction.

And so after Judgment given, and Execution awarded in the County, or in other Court-Baron, which hath not Power to hold Plea of Debt of the Sum of forty Shillings, &c. or of Damages in Trespass amounting to such Sum, or more, the Party Defendant shall have a Writ of Prohibition unto the Bailiffs, or unto the Sheriff or Officer of the Court, that they do not Execution; and if they have distrained the Party to make Satisfaction, that then they release the Distress, and that they revoke what they have done therein.

There is a Rule in the Register thus: *Si Placita de catallis vel debitis B quæ summam quadraginta solidorum attingunt, vel eam excedunt, in Com'; vel in alia Curia, sine Brevi placitent', quod absit, non fiat inde Breve de falso Judicio, nec Recordare, nec Breve de Executione Judicii; exceptis Cur' Civitatum, & aliis, quæ secundum Consuetud' hujusmodi Jurisdictiones habent, &c.*

[ 47. ]

1 E. 4. 15.  
Justices lieth  
without Vi  
& Armis.  
Littleton.

And if a Man sueth another in the County, or other Court, upon a A  
Plaint of Trespass *Vi & Armis*; the Defendant may sue a Prohibition unto the Sheriff, or unto the Bailiff, in such Form:

*Rex Ballivis de B. &c. Cum Placita de transgr' contra pacem nostram in regno nostro Angl' vi & armis factis, secundum Legem & Consuet' ejusd' Regni, sine Brevi nostro placitar' non debeant, ac W. implac' coram vobis in Cur' prædict' Domini vestri R. de T. de diversis transgr' eidem W. per præfat. R. contra pacem nostram, vi & armis (ut dicit') factis, ut accepimus, in ipsius W. grave dampnum, & contra Legem & Consuet' præd': Vobis præcipimus, quod si ita sit, tunc Placita prædict' coram vobis ulterius tenend' supers. omnino, præf. W. dicentes ex parte nostra, quod Breve nostrum de Transgr' præd' versus præfat' R. sibi impetret, si sibi viderit expedire. Teste, &c.*

And if one Man sueth another in a Court-Baron, or other Court B  
which is not a Court of Record, for Charters concerning Inheritance or Freehold, he shall have a Prohibition, and the Form is such:

*Rex Ballivis de R. de P. salutem. Cum Placita de Detentione chartar' seu scriptor' Liber' Tenement' tangentium in aliquibus Cur' que record' non habent, secundum Legem & consuet' regni nostri, sine Brevi nostro placitari non debeant, ac E. W. de eo quod id' W. redd' præf. E. tres Chartas, coram vobis in Cur' præd' Domini vestri de P. sine Brevi nostro implac', ut accepimus: Vobis præcipimus, quod si ita sit, tunc Placito illo coram vobis in Cur' præd' sine Brevi nostro ulterius tenendo supers. omnino, & præf. E. dicatis ex parte nostra, quod Breve nostrum de Detentione Chartar' præd' versus præf. W. sibi impetret, si sibi viderit expedire. Teste, &c. An. 8. Apud Ebor' istud Breve ordinat' fuit per Concilium.*



## *Quare non admisit.*

**C** IF a Man do recover an Advowson, and hath a Writ unto the Bishop to admit his Clerk, and he will not admit him ; then the Party may sue an *Alias* and *Pluries*, or Attachment, &c. or may sue a Writ out of the Chancery, or out of the Common Pleas, at his Election, *de quare non admisit*, as well in the Term-time as in the Vacation ; but the best is in Term-time to sue in the Common Pleas : And in this Writ it behoveth him to certify the Recovery. And the Form of the Writ of *Quare non admisit* for the King is such :

*Rex Vic', &c. Sum', &c. A. Winton' Episc', &c. quod sit coram nobis tali die, &c. ubicunque, &c. Quare cum nos nuper in Cur' nostra coram nobis recuperassemus, &c. And he shall not say in the Writ, Si Rex fecerit te securum, because the King shall not find Pledges, &c.*

**D** And if the King do recover his Presentment in the Common Pleas, yet he may sue a *Quare non admisit* in the King's Bench before himself.

**E** And so if a common Person do recover in a *Quare Impedit* in the Common Pleas, and the Record is removed by a Writ of Error into the King's Bench, and there affirmed ; then he shall have a Writ unto the Bishop there, and ought to sue *Quare non admisit* against the Bishop there upon the Record, otherwise not. After the Record removed by a Writ of (a) Error, the Plaintiff who recovered shall not have *Quare non admisit* until the Judgment be affirmed in the King's Bench.

**F** And the *Quare non admisit* ought to be sued in the County where the Bishop refuseth the Plaintiff's Clerk.

**G** And in the *Quare non admisit* he shall recover only Damages, and shall not have his Clerk admitted by this Writ.

**H** And if the Bishop hath admitted and instituted him, and the Archdeacon will not induct him ; he hath no Remedy but only in the Spiritual Court, as it is said ; for it is a good Plea for the Bishop to say, That he amitted the Clerk, and sent his Letters unto the Archdeacon who will not induct him. And I conceive that if the Archdeacon refuse to induct the Clerk, that the Clerk shall have an Action on the Case against the Archdeacon, because the Induction is a Temporal Act. As if the Sheriff upon *Habere facias seisinam* will not admit him into Possession, he shall have an *Alias* and *Pluries*, (b) and Attachment against him. But some have said, that he shall have a Citation against the Archdeacon

(a) One Defendant shall not have Oyer of the Record ; vide hic 48. F. 16 E. 3. *Quare non admisit* 3. But by Hill, if the Record be in another Place, the Justices shall surcease till they have inspected the Record. See accordant 17 E. 3. 55. by Shard, in a *Quare non admisit* in the Rolls. For the Reversal of the first Judgment is

a Reversal of the second. See 26 E. 3. 35. contra, & *Quare hic*, if it be a new Original. Note also 26 E. 3. 75. accordant.

(b) See 13 E. 3. *Quare non admisit* 4. and 9 E. 3. ibid. 13. a *Quare non admisit*, against an Official. *Alioquin Rex se capiet ad illum.*

See 12 E. 3. *Quare non admisit* 6.

deacon in the Spiritual Court, and punish him there ; for perhaps he may alledge a special Cause, for which by the Spiritual Law he ought not to be inducted, which Cause cannot be determined in the Temporal Court. *Idco Quære.*

Vide 21 H. 7. And if the Vicar-general do refuse to admit the Clerk, the *Quare I*  
3. A Man recovered in a *non admisit* shall be brought against the Bishop for that Refusal ; and if  
*Quare impedit*, and had a Writ to the Bishop, who returned, that the Clerk who was in had resigned, and that the Church was full of the Presentment of *J. H.* and upon that Return the Plaintiff had a *Scire facias* against the Bishop : And after the Return the Opinion of the Court was, that he should have *Quare non admisit*.

(a) The Bishop is not bounden to admit the Clerk, if the Church be full of the Presentment of another Party who is not Party to the Recovery.

If the Bishop do refuse the King's Presentee, and doth afterwards admit him, yet the King shall have *Quare non admisit* against him for that Refusal ; and so shall a common Person in like manner have, as I conceive.

And upon that Return the Plaintiff had a *Scire facias* against the Bishop : And after the Return the Opinion of the Court was, that he should have *Quare non admisit*.

In a *Quare non admisit* the Bishop may say, that he did present for M Lapfe.

And *Quare non admisit* was maintainable against the Bishop's Official. N Mich. 9 E. 3.

[48.] If a Man do recover in a *Quare Impedit* his Presentment unto a Chapel which is donative, then I think that he shall have a Writ unto the Sheriff to put the Clerk who recovered into Possession. (b)

And in a *Quare non admisit* the Bishop may say, that the Church is litigious betwixt two, &c.

If a Man hath a Donative Chauntry, which is of the Nature that one name unto another his Clerk, and that the other shall institute and induct him ; there if he who hath the Nomination be disturbed, he shall have a *Quare impedit*, and if he do recover, he shall have a Writ unto him who ought to instal and induct him, to put him in Possession. But if he be disturbed by him who ought to instal him, then he ought to have a *Quare impedit* against him : And after that he hath recovered, he shall have a Writ to him who disturbed him, to put his Clerk into Possession ; or he shall have a Writ unto the Sheriff, to put the Clerk of him who recovered into Possession, at his Election.

*Quare*

(a) And Note ; The Bishop shall be excused, if he return the (whole) Matter on the Writ, *ad admittendum Clericum*, whereupon the Party may have a *Quare non admisit* against the Bishop, to try the Truth of the Return, and also a *Scire facias* against the Incumbent to try his Title. 9 Eliz. Dyer 260. a. Bassett's Case.

Also, if the Bishop be inhibited by the Archbishop to admit the Clerk, he shall be excused, and a Writ shall issue to the President of the Arches. Parl. 22 E. 3. N. 63.

(b) See 14 H. 4. 11. accordant, by Hankf. of a Free Chapel, which one has by the King's Grant.



## *Quare Incumbravit.*

- D** *QUARE incumbravit* (a) ought to be sued in the County where the Church is, because the Wrong is done here.
- E** And *Quare incumbravit* doth not lie but where the Plaintiff recovereth 17 E. 3. 74. by Judgment of Court. And the King may sue a *Quare incumbravit* in the King's Bench, although the Record of Recovery be in the Common Pleas; but a common Person cannot do so.
- F** (b) And *Quare incumbravit* may be sued in the Common Pleas, al- 17 E. 3. 74. though the Record be removed in the King's Bench by a Writ of Er- for all. ror, or in the Treasury; but if the Record be in the King's Bench, it seemeth then that the Party shall sue the *Quare incumbravit* there, &c.
- G** And *Quare incumbravit* is an Original Writ, and shall issue out of the Chancery, and not out of the Common Pleas.
- H** And *Quare incumbravit* doth not lie until the Party hath sued the Writ of *Ne admittas* (c) unto the Bishop; for if the Bishop do incumber the Church before the Writ of *Ne admittas* sued, then the Party shall have a *Quare impedit*, and not *Quare incumbravit*; for the Bishop cannot have Notice until the *Ne admittas* be delivered unto him. And if the (d) Bishop, after the *Ne admittas* delivered unto him, do admit his Ante. 35 G. Clerk for whom it is found by the *Jure Patronatus*, yet the other Party
- I** shall have *Quare incumbravit* against him. (e) And in *Quare incumbravit* he shall have Judgment to recover Damages, and also his Presentment. But so shall he not have in *Quare non admittit*, but only Damages.

### (a) And

(a) *Per Thorp.* If the Bishop incumber where no Debate or Dispute is, yet this Writ lies. 17 E. 3. 74. b. 21 E. 3. *Quare Incumbravit* 3. and so by *Wilby*, if the Bishop incumber within the six Months, tho' no Plea be pending. 18 E. 3. 17. b. which was admitted by *Hill* and *Pole*, and that there shall be a Special Count, and not of a Recovery.

(b) In a *Quare Incumbravit*, *per Thorp & Green* adjudged. 1. That one shall have Oyer of the Record. 2. That one shall have this Writ before Judgment. 3. That the Writ shall be returnable in the same Court where the original Judgment was given. 4. Where the Writ supposes the Plea pending touching the Church, 'tis Good. 5. That the Writ shall not make Mention of the Place where the Recovery was had. 6. It need not mention whether he incumbered within or after the six Months, but that shall come by way of Answer. 7. If one recover within the six Months, and the Bishop incumbers, he shall have a *Quare Incumbravit* within the six Months.

8. 'Tis no Plea that the Record is removed by Error. 17 E. 3. 50, 54, 74; or that he has received the Plaintiff's Clerk at his Nomination. 21 E. 3. 3. a.

(c) *Note*; The Issue in that Case shall not be on the Day that the Prohibition was delivered, but whether he received the Clerk before the Prohibition delivered or not. 19 E. 3. *Quare Incumbravit* 2.

(d) See accordant 19 E. 3. *Quare Incumbravit* 2. 18 E. 3. 17. And the Reason is because the Patron need not shew the Right of Patronage to be in him, for the *Ne admittas* with the Recovery gives him the Action, tho' he be not the true Patron. See 8 R. 2. *Quare Impedit* 199. a *Quare Impedit* lies in such Case, altho' he has not presented to the same Avoidance. 17 E. 3. 75. also the Plaintiff need not count that the Bishop refused his Clerk, for the *Incumbravit* is a Refusal. 18 E. 3. 17. b.

(e) See 21 E. 3. 3. accordant; but his Temporalties shall not be (seized) at Common Law.

(a) And in 21 E. 1. it was adjudged, that a Man shall have *Quare K incumbavit* without making Mention of any Recovery in the Writ, or in the Count. But by the Rule of the Register he ought to mention the Recovery; and that seems to be the better Opinion.

34 H. 6. 39.

(a) And after the *Ne admittas* delivered, if the six Months pass, the L Bishop may present his Clerk for Lapse, and shall not be charged by the *Quare incumbavit* for that Presentation; but it seemeth he cannot admit the Clerk of the other Man after the six Months past, for that shall be against the Writ of *Ne admittas* delivered unto him. And also if the Bishop do present the Clerk of the other Party after the six Months, who had presented unto him before, that Presentment maketh Title to the Party, although it be after the six Months; by which it seemeth that the *Quare incumbavit* lieth then for the Party.

M. Vide accordant 19 E. 2. *Quare incumbavit* 2.

And if the Plaintiff be Nonfuit in *Quare incumbavit*, he may sue a new *Quare incumbavit*, and may vary from his Count upon the first Writ. And it is a good Issue, that he did not incurber, &c. after the N Prohibition delivered unto him.

And if a Man hath a *Quare impedit* depending, and he sue a *Ne admittas* to the Bishop, and afterwards the Bishop do incurber the Church within the six Months with his Chaplain, or with the Defendant's Chaplain; then the Plaintiff shall have *Quare incumbavit*, and the Form of the Writ shall be such.

*Rex Vic', Linc' salutem. Si A. fecerit, &c. tunc sum' H. Linc' Episc', quod sit coram Justic', &c. ostens' quare cum idem A. in Cur' nostra (a) coram præf' Justic' recuperasset versus B. Præsentat' suam ad Eccles' de I. per cons' Cur' nostræ præd', idem tamen Episc', pendente Placito in præd' Cur' coram præf' Justic', eandem Eccl' incumbavit, in ipsius A. dampnum non modicum & gravamen, & contra Legem & Consuet' regni nostri, & habeas ibi, &c. Teste, &c.*

And if he do not appear at the Return of the Writ of *Incumbavit*, nor at the *Alias*, then the *Distingas* shall be in the End, *In nostri ac mandator' nostror' contemptum manifest', & consideration' Cur' nostræ enervationem manifestam: Et habeas ibi, &c.*

And

(a) A *Quare Incumbavit* was brought by the Tenant of one *Audley* against the Bishop of *Exeter*, and counted that the Church avoided the 13th of *April*, by the Death of I. S. and that Debate arose between him and *William Chambernoon*, and that the Plaintiff recovered in a *Quare Impedit*, and that pending that Suit, he delivered to the Bishop a Prohibition at such a Place, and that the Bishop incumbred within the six Months; the Bishop pleads and shews, that the *Quare Impedit* bore Date the 9th of *April*, and so was brought in Wrong to the Incumbent, *sed non allocatur*. For suppose it was brought, living the Patron, if the Parson dies pending the Plea, and the Bishop incurber it, and after-

wards the Plaintiff recovers, a *Quare Impedit* lies. Whereupon the Bishop taking no Notice of the Prohibition served on him, pleads, that the Church had been Void twelve Months, and that six Months passed before the Recovery, whereby the Bishop presented as Ordinary, *absque hoc*, that he incumbred within the six Months, and resolved that what is said of the Time of the Avoidance shall not go to the Incumbance; wherefore *Pole, &c.* took Issue, whether he incumbred within 6 Months after the Avoidance, &c. 18 E. 3. 17.

(b) And *Note*. This Writ has been adjudged Good, without saying before what Justices he recovered. 18 E. 3. 17. in the Case *supra* of *H. de Audley*.



**Q** And if a Man hath a Writ of Right of Advowson depending betwixt him and another, and the Church void pendant the Writ, the Plaintiff shall not have *Ne admittas* to the Bishop, nor the Writ of *Quare incumbavit*, although the Bishop incumber the Church; for the Demandant shall not recover the Presentment upon this Writ, but the Advowson; and if he hath Title to present, he may present, and have a *Quare impedit* if he be disturbed.

*Juris utrum.*

**R** *JURIS utrum* is a Writ of the highest Nature that a Parson can have; [49.] and he shall have this Writ where the Lands or Tenements are aliened by his Predecessor, or if a Recovery be had against the Predecessor by Default, or by Reddition, or for Want of Pleading of the Predecessor, where he hath not prayed in Aid of the Patron and Ordinary. But if he do pray in Aid of the Patron and Ordinary, and they join in Aid, and render the Land, or confess the Action, then the Successor of such a Parson shall not have this Writ against that Recoveree: And also if a Man recover by Action tried against a Parson's Lands, or Tenements, by Verdict, and the Parson doth not pray in Aid of the Patron and Ordinary, yet his Successor shall have a *Juris utrum*, and shall not be put to a Writ of Attaint. *Post* 50. D.

**A** And if a Man intrude into Lands and Tenements after the Death of a Parson, the Successor shall have this Writ of *Juris utrum*: And so if a Parson be disseised of Lands and Tenements, Parcel of his Rectory, and dieth, his Successor shall have a *Juris utrum*. (a)

**B** And also a Parson may have an Assise of Lands or Tenements of his Rectory, or a Writ in the *Quibus*, in the Nature of an Assise, or a Writ of Entry in the *Per* or *Cui*, or in the *Post*, upon a Disseisin made to himself, but not upon a Disseisin made to his Predecessor, but shall be put to sue a *Juris utrum*, &c. 20 E. 3. *Juris utrum* 5.

**C** Also a Parson may have a *Cessavit*, if his Tenant who holdeth of him cesseth, &c. or a Writ of Escheatry, if his Tenant die without Heir. And by the Statute of *West.* 2. he may have *Quod permittat* of common Pasture. *Vide* 57. c.

**D** And if a Parson with the Assent of the Patron and Ordinary leaseth his Glebe-Lands for Life, and the Tenant alieneth in Fee, or loseth by Default; it seemeth the Parson who leased the Land shall have a *Consimili casu* during the Life of the Tenant for Life; and after the Death of the Tenant for Life, a Writ of *Entry ad Communem Legem*. *Vide* 50 H.

**E** And if an Abbot or Prior be Parson Imparsoned of a Church, and alieneth the Land of the Rectory, his Successor shall have a *Juris utrum* to recover the Land, and not other Writ, because he shall have that as Parson.

(a) See 26 H. 8. 3. 33 E. 3. *Ayd del Roy* 163.

And if a Man leaseth Lands unto one for Life, and afterwards F granteth the Reversion by Licence unto a Parson and his Successors, and the Tenant attorneth, and after the Tenant for Life loseth the Land by Default, or alieneth in Fee; the Parson shall have a Writ *de Consimili casu*, during the Life of the Tenant for Life, and after his Death he shall have a Writ of *Entry ad Communem Legem*, &c.

And if a Parson lose by Action tried, or loseth by Default, his Successors shall have a Writ of Error or Attaint.

And if a Reversion be granted unto a Parson and his Successors by H Licence, he shall have a *Quid Juris clamat*; or if the Services of a Tenant be by Licence granted unto a Parson and his Successors, he shall have a *Per quæ servitia*: And so of a Writ of *Quem redditum reddit*, &c.

And so if a Parson be Tenant in Common of a Wood, or other I Land, in the Right of his Church with another, and the other Tenant do Waste in the Wood, or Land, &c. the Parson shall have a Prohibition; and if he do Waste, he shall have a Writ of Partition, and the Place wasted shall be assigned to the other Party by the Statute of *West. 2. cap. 22.* But if a Parson be Patron of a Vicarage, and the Vicarage void, and a Stranger doth present, the Parson shall have a *Quare impedit*, or *Darrein Presentment*: But if the six Months pass, he shall K have a Writ of Right of Advowson, because that that Writ is given only for him who hath the entire Fee and Right in him, and the Parson hath not the same; for the Right is in the Patron and Ordinary.

Nor shall a Parson have a Writ of Right *Sur disclaimer*, nor a Writ L of Customs and Services, nor an *Injuste vexes*, nor such Writs as are grounded upon the mere Right. But it seemeth he may have *Contra formam Collationis*, or *Feoffamenti*, and a Writ of *Mesne*, and *Ad Terminum qui præterit*, &c. and such possessory Writs which are grounded upon the mere Right.

And a Parson or a Vicar shall have a Writ of *Juris utrum* against M those who are several Tenants; and then the Form of the Writ shall be such:

(a) *Rex Vic' S. salutem. Si L. Episcopus de Lond' Person' Ecclesiæ de N E. fecer' te secur', &c. tunc summ' xii. liber', &c. de visu' de E. quod coram Justic' nostris apud West' tali die, &c. parati sacrament' recogn', utrum xx. acrae terræ cum pertiū in E. sint libera Eleemosyna pertiū ad Ecclesiam ipsius L. an laicum feod' A. B. C. & D. & interim terram ill' videant, & sum', &c. præd' A. qui duas acras inde tenet, B. qui octo acr' inde tenet, C. qui quinque acr' & unam rodam inde tenet, & D. qui quatuor acr' terræ & tres rodas inde tenet, quod tunc sint, &c.*

And

(a) This Writ seems intended of an Appropriation, and not of a Commendam, and seems maintainable in, &c. 29 E. 3. 11.

And in this Writ 'tis no Plea for the Tenant to say, that he is Parson of the

Church of D. and that this is the Freehold of his said Church, (Judgment *de Breve*) for the Plaintiff (Court) cannot take Notice thereof, (or join Issue thereupon.) 3 E. 2. Brief 785.



O And two Prebendaries may be one Parson in one Church, and then they shall join in a *Juris utrum*; and their Writ shall be such:

*Si W. Præbendarius Præbendæ de N. & R. Præbendarius Præbendæ de I. in Ecclesia beati Petri Eborac', Person' Ecclesiæ (a) de A. prædictis Præbendis annexæ, fecerint, &c. tunc sum' xii. &c. ut supra.*

P And where a Man is Parson of the Moiety of the Church, and another Clerk is Parson of the other Moiety of the same Church, then one may have a *Juris utrum*, and the Writ shall be such:

*Si W. Person' medietatis Ecclesiæ de N. fecerit, &c. tunc sum' xii, &c. sacramento recognos' utrum, &c. sit libera Eleemosyn' pertin' ad medietatem ipsius W. Ecclesiæ præd' an libera Eleemosyn' pertin' ad alteram medietatem R. Person' alterius medietatis Ecclesiæ præd', &c. And Dean and Chapter may have *Juris utrum* in Special Case where they are Wardens of a Chauntry, thus:*

R *Rex Vic' Lond' salut' Si Decanus & Capitulum Ecclesiæ S. Pauli Lond', Custodes Cantariæ ad Altare beatæ Mariæ in Ecclesia Sancti Pauli Lond', pro anima Ric' D. ordinat', fecerint vos secur', &c. tunc sum', &c. de visn' urbis Lond', quod sint coram Justic' nostris apud Westm' tali dic, &c. utrum, xx. solid' reddit' cum pertin' in Suburbio Lond' sint, &c. pertin' ad Cantariam ipsorum Custod' ad Altare præd', an Laicum feod', &c. & interim Ten' unde redditus, &c. Teste, &c.*

[50.]

A Where a Parson alieneth the Right of his Church with Warranty, and afterwards the Alienee is impleaded, and voucheth the Parson, who entereth into the Warranty, and loseth by Action tried, his Successors shall have a *Juris utrum* of the Seisin of his Predecessor, which he

B had before the Alienation. And a Vicar shall have a *Juris utrum* against the Parson for the Glebe of his Vicarage, which is Parcel of the same

C Church. (b) If a Parson receive Rent or Fealty of the Tenant of the Land, which is aliened by his Predecessor, he shall not, during his Life, have a *Juris utrum*; but his Successors shall have *Juris utrum*.

D If a Writ of Right be brought against a Parson, who joineth the Mife without praying in Aid of the Patron and Ordinary, and afterwards loseth by Default, his Successor shall have *Juris utrum*. Otherwise it is if he loseth the Land by Verdict, as it seemeth.

E If a Parson have a Chapel annexed to his Parsonage, to which Chapel Glebe is appurtenant, the Parson shall have *Juris utrum* of the same.

F A Recovery in a *Cessavit* against a Parson by Default shall not bar his Successor, but he must have a *Juris utrum* against him who recovered.

G If a Chaplain of a Chauntry lose the Lands of his Chauntry by an Assise of *Novel Disseisin*, yet he himself shall have a *Juris utrum*, because

Q 2

that

(a) See the like Clause. Rot. 26 E. 1. M. 10. dorso, Ecclesia de Ayrmir Spektan' ad Præbendam de Grendale & Worshill, Dioces. Exon. See Co. Lit. 18. a.

(b) See 8 H. 5. 10. 2 H. 4. 5. 32 H. 8. Acceptance 14. contra of a Lessee for Years. 11 H. 4. 25. See also 8 E. 3. 29. ante. 49. I.

40 E. 3. 27.  
2 H. 4. 2.  
Quare. 11.  
H. 4. 13.  
11 E. 3. *Juris utrum* 19.  
7 Eliz. Dyer  
239, 240. 22  
H. 8 B. accept 14. 2 E.  
6. B. accept  
20.

that that is a Writ of Right ; and the Writ is to enquire, *Utrum sit libera Eleemosyna Cantariæ, an Laicum feodum, &c.* H. 1 R. 2.

1 E. 1. *Quod*  
permittat 9.  
32 E. 1.  
Comment.  
24.

The Parson or Vicar shall have a *Quod permittat* in the *Debet* only, H of his own Seisin, or of the Seisin of his Predecessor ; and may have that *Quod permittat* in the Nature of an Assise of Mortdauncestor, upon the dying seized of his Predecessor.

In a *Juris utrum* the Plaintiff ought to be named Parson or Vicar, I or such Name in Right of which Name he bringeth his Action : For if Abbot, or Bishop, or a Dean, bring a *Juris utrum*, by Reason of an Land, which is Parcel of the Rectory annexed to the Bishoprick, or appropriated unto the Abbey or Deanery, they ought to be named Parsons of the Church in the Writ.

In a *Juris utrum*, if the Tenant at the first Day do make Default, Re- K  
summons shall be awarded, and if he make (a) Default again at the  
Summons returned, then the Jury shall be taken. (b) And the Tenant L  
shall plead in a *Juris utrum*, as the Tenant shall plead in Assise of *Novel*  
*disseisin*, scil<sup>t</sup> two or three Dilatories to the Writ ; and if it be  
not found, then to pray the Jury to enquire of the Points of the  
Writ. (c)

And where the *Juris utrum* is brought against several Tenants by se- M  
veral Summons in the Writ, it may be taken against one only for that  
Parcel, and afterwards against the others. But it is otherwise in an  
Assise of *Novel disseisin*, if it be not in Special Cases.

### *Writ of Consultation.*

See Prohibi-  
tion.  
See the Sta-  
tute de cir-  
cumspette a-  
gatis, 13 E.  
1. Rastall,  
Prohibition  
3.  
37 H. 6. 9.  
Aston.

**I**F the Bishop cite any of the Parishioners of the Church to be con- N  
tributory unto the Reparations of the Parish-Church, (d) or of  
any Chapel annexed thereunto, if the Party who sueth the Prohibition  
directed unto the Bishop, suppose that he is impleaded of a Lay-Fee in  
the Spiritual Court, the Bishop shall have a Consultation upon the  
Matter shewed in the Chancery on the part of the Bishop.

And so if a Man obtain any Judgment or Sentence in the Spiritual O  
Court for a Legacy of Money, or other Chattels, if the Executors will  
sue a Prohibition for to delay the Execution of the Judgment, the Party  
shall have a Consultation.

And if any Chaplain of the King's free Chapels keepeth any Con- p  
cubine, then the Bishop may cite him before him for to punish him :  
And if the Chaplain purchase a Prohibition, because the King's free  
Chapels ought not to be visited by the Bishop ; yet upon the Matter  
shewed,

(a) And therefore he shall not be Effoined against A. and B. by several Summons, no-  
ed at the Resummons. 11 E. 3. Effoin 4. thing was done against A. but the Jury was

(b) See 11 E. 3. *Juris utrum* 2. 40 E. 3. taken against B. only, and found for the  
29. Demandant ; but Stone would not give Judg-

(c) See 17 E. 3. 48. accordant, per ment.  
Tbirm. But Note there, in a *Juris utrum*

(d) See the Register 44. accordant.



shewed, the Bishop shall have a Consultation to proceed to correct him by Pain corporal, and not pecuniary.

**Q** If a Prior and Covent sue in the Spiritual Court for Tithes and Mortuary, *J.* Parson of the Church of *C.* and an Abbot cometh into the Chancery, and surmisseth that *J.* holdeth the Church of his Patronage, and that the Prior, *&c.* claimeth the third Part of the Church of his own Advowson and Patronage, and prayeth an *Indicavit*, and the same is granted; now the Prior, *&c.* may shew this Matter in the Chancery, and have a Consultation, because that in the Statute of *Articuli Cleri* it is contained, that in Dismes and Mortuaries, when under these Names they are proposed, there is no Room for our Prohibition. See *Articuli Cleri*, cap. 1.

**R** If a Prior sueth in the Spiritual Court for the Moiety of the Tithes of four Plough-lands, which he claimeth as appertaining unto the Church of *N.* whereof he is a Parson Imparfonee, which are not of the Value of the fourth Part of the Church, if the other purchaseth an *Indicavit*, surmising, that they are of the Value of the fourth Part; he who is sued in the Spiritual Court shall have a Consultation to proceed, *dummodo non agitur de Advocacione alicujus partis Ecclesiæ, dicta Prohibitione non obstante.*

**S** If a Man promise unto another with his Daughter in Marriage 10 *l.* by Reason whereof the Party marrieth his Daughter, if he who promiseth the Money will not pay the Money, he shall be sued for the same in the Spiritual Court; and if he purchase a Prohibition, the other shall have a Consultation: And if he who promiseth the Money dieth, yet the Husband who married his Daughter may sue the Executors for that Money, or the Executor of his Executors, in the Spiritual Court. Vide ante:  
44. A. 14 E.  
4. 6. 17 E. 4.  
6. Com. 309.  
20 E. 4. 3.  
[51.]

**A** And if any of the Parishioners do disturb any Parson or Vicar to carry his Tithes by the usual Ways and Passages, the Parson may sue in the Spiritual Court for this Disturbance; and if the other sue a Prohibition upon the Matter shewed, he shall have a Consultation.

**B** If a Parson or Vicar have a Pension out of another Church, and the Pension is kept from them, and another Parson taketh and claimeth the same; the Parson or Vicar who ought to have the Pension may sue for the same in the Spiritual Court. And so if a Parson, or Vicar, or Master of an Hospital, sue for a Pension in the Spiritual Court, which they and their Predecessors have had Time out of Mind, *&c.* if the other Party purchase a Prohibition upon the Matter shewed, he shall have a Consultation: And yet it seemeth, that upon the Prescription he may maintain a Writ of Annuity at the Common Law, but the same is in his Election. (a) But if he once sue a Writ of Annuity at the Common Law for the same, and declare there upon the Prescription, then he shall not afterwards sue in the Spiritual Court for that Annuity in the Name Pension.  
See the Stat.  
34 H. 8. c.  
19.

(a) See 2 *Inst.* 491. That it is only suable at Common Law, yet in *Levinz's Reports* 62. and 113. 'tis said by *Twifden* Justice, that the Plaintiff hath his Election, to which the Court inclined. *Paf.* 23. *Car.* 2. B. R. and yet in *Paf.* 15. *Car.* 2. B. R. *Windham* cited a Case. 11 *Car.* 1. in B. R. where *Coke* held the Law to be contrary, and *Fitz.* Opinion denied.

Name of a Pension, and if he do, it seemeth the Party may have a Prohibition against him.

18 H. 6. 19. And a Parson may sue in the Spiritual Court a Spoliation against another for taking of his Tithes, or for taking of any Pension which doth appertain to his Church, although they claim by several Patrons, and of their several Presentments: But this is intended only where the Tithes and Profits taken and spoiled do not amount unto the fourth Part of the Value of the Church; for if they claim by several Patrons, and the Tithes, Profits, or Pensions, amount unto the fourth Part of the Church, then the Party grieved shall have an *Indicavit*, because the Title of the Patronage doth come in Debate, &c. But if they claim by one and the same Patron, and of his Presentment, then one Parson shall have a Spoliation in the Spiritual Court against the other, although the Profits do amount unto a fourth Part, or a third Part, or the Moie-ty of the Church, because the Title of Patronage comes not in Debate; and if a Prohibition be sued thereupon, the Party shall have Consultation.

Vide 39. A. For where the Tithe of the Patronage is in Question, there is no Spoliation.

If a Man have his Sheep lying and feeding for one Year in a Parish, D the Parson of the Parish may sue in the Spiritual Court for Tithe of Wool of those Sheep; and if the Party sue a Prohibition, he shall have a Consultation.

And note, that Consultation shall be granted and directed to the Party E himself who sued in the Spiritual Court, that he do not proceed in his Suit there; and also he may have a Consultation directed unto the Judge, commanding him to proceed there, notwithstanding the Prohibition a-fore said.

And the Parson may sue the Executors of his Predecessor in the Spi- F ritual Court for the Dilapidations, and for that Sum of Money which is found by the Enquest charged by the Bishop or Ordinary, that the Dilapidations do amount unto, to pay the same: And if the Executors sue a Prohibition, the Party who sued in the Spiritual Court shall have a Consultation directed to the same, &c. to proceed; and another Con- sultation directed to him to sue as before.

And if a Man doth detain his Tithes for his Sheep, which are in the G Parish, and there feeding for Half a Year, if he die, the Parson may sue his Executors for these Tithes in the Spiritual Court, and shall have a Consultation, if the Executors sue a Prohibition. And the Parson by Prescription may claim the Tithe of Calves and Kine, and Milk of Cattel feeding in the Parish, from the Feast of the Holy Trinity, unto the Feast of Saint Peter, which is said *ad vincula*; & *Decim' Lan' Pro- venientis de Ovibus Parochianorum suorum occisis & morientibus a festo S. Mich. usque ad festum Paschæ singulis annis*; & *Decimas Mellis & Cereæ provenient' de Apibus & alveis Apum infra limites Parochiæ suæ*; and may sue for them in the Spiritual Court, and shall have a Consultation, if he be disturbed by Prohibition.

Prescription.

And a Man may sue in the Spiritual Court for a Legacy: Where a H Man deviseth *Fabricæ Ecclesiæ 20 s. &c.* the Parson may sue the Execu- tors for the same in the Spiritual Court, &c. and may sue the Execu- tors



tors in the Spiritual Court for the Tithes of Mills due by the Testator in his Life-time. And so a Vicar may sue in the Spiritual Court for the Tithe of Beans and Oats, arising within certain Limits within his Parish. And so he may sue *pro Decimis panagii provenientius de bosco suo, & pro pullanis provenientius de equitio suo, & pro Butyro, Caseo, & Lacticio, tempore hyemali.* But it seemeth the same ought to be by Prescription. And it was agreed before the King's Council in the Parliament holden at Salisbury, *quod Consultationes fieri debeant de silva cædua, eo non obstante quod non renoventur per annum.*

I (a) A Man may sue in the Spiritual Court, where another Man doth defame him as a Falsifier, an Adulterer, or an Usurer, &c. See *Post. 53. F.* 27 H. 8. 13.

K And a Parson, or other Priest, may sue in the Spiritual Court, for laying violent Hands upon him, &c. to have him (b) Excommenge, or to have coporal Punishment, but not to have Amends there. 12 H. 7. 23. per Constable.

L Where a Prior sueth a Parson in the Spiritual Court *Pro duabus partibus Decimarum provenientius* of the Demesnes of F. whereof the Parson hath spoiled the said Prior, for which the Parson purchaseth an *Indicavit* in the Chancery, surmising that the Tithes do amount unto the fourth Part of the Value of his Church, and that the King is Patron thereof, by Reason of the Wardship of an Infant in the King's Hands, by Reason whereof the Prior cometh into the Chancery, and sheweth there that the Tithes do not amount unto the fourth Part of the Value of the Church, and hath a Writ directed unto the Bishop to certify the King into the Chancery the Value of the Church which the Parson holdeth, and the Value of the Tithes demanded by the Prior: If the Bishop by his Letters certify for the Prior, then the Prior shall have a Consultation. And so it seemeth by this Writ, that where an *Indicavit* is sued, &c. the King shall be certified by the Bishop's Letters upon a Writ directed to the Bishop, what is the Value of the Church, and also what is the Value of the Tithes demanded in the Spiritual Court, before a Consultation shall be granted: And it seems to be a good Rule, and a good Order, so as no Party shall be deceived: And this Certificate of the Bishop shall bind the Party to say or aver any Thing against it. 11 H. 4. 48. But a Consultation shall be granted upon the Certificate returned, &c. So if the Bishop certify that J. S. is utlage, or in Prison at

the Time of the Utlagary, 15 E. 3. Utlagary. 2. Brev. Estoppel 211.

If

(a) Note; The offence in this Case ought to be merely Spiritual. 22 E. 4. 10. 2 E. 4. 10.

(b) See accordant 7 H. 4. 1. *Si non de Violata pace nostra, sed de Excommunicatione nostra ad correctionem anime tantummodo agatur.* Register 49. b. See 11 H. 4. 88. a. per Thirning. Where the Defendant in Attachment

on a Prohibition pleads that he was a Clerk, and had Tonsure, and that the Plaintiff beat him, and that he the Defendant sued in Court Christian, only to inform the Court, that the Plaintiff had offended against Holy Church, without suing in any other Manner.

If a Bishop make an Order, that the Parson of such a Church shall A yearly pay unto the Abbot of B. and his Successors two Parts of the Profits of the Church in the Name of a yearly Pension, and that the Parson before he have Possession of the Church take an Oath so to do, for which the Parson sueth in the Court of Rome, and obtaineth a Delegacy directed unto the Bishop and his Officers, to repeal the Order, &c. Now if the Abbot sueth a Prohibition upon this Matter, the Parson shall have a Consultation.

If a Lay-man will not make his Offerings at Days limited to the B Parishioners to offer, or will not confess himself unto his Curate, or receive the Sacrament of our Lord Jesus Christ of his Curate, by Reason whereof the Curate citeth and sueth him in the Spiritual Court for the same: If he purchase a Prohibition, &c. upon shewing the Matter, a Consultation shall be granted.

See for their  
Capacity at  
the Common  
Law, 11 H.  
4. 12. 7 H.  
6. 30. 12 H.  
27. 8 E. 4.  
6. 12 H. 7.  
22.

If the Churchwardens of any Church have used Time out of Mind C to receive yearly of one of the Tenements of the Parish a Pound of Wax to maintain the Taper before the Crucifix in the Church, and he who is now Tenant of the Tenement refuseth to pay this Wax, &c. there the Churchwardens may sue in the Spiritual Court for the same: And if he obtain a Prohibition, Consultation shall be granted.

If a Man be condemned in the Spiritual Court in a Cause of Defa- D mation, for which he appealeth unto the Court of Canterbury, &c. and there the Sentence is confirmed, and the Party condemned in twenty Shillings for Costs, and the Cause remitted unto the Judges before whom it was first commenced, by Reason whereof he who is condemned sueth a Prohibition; the other Party shall have a Consultation. If a Parson E doth detain from the Parishioners the Goods of the Church, and in his Will he enjoineth his Executors to deliver them unto the Parishioners; the Parishioners may sue the Executors in the Spiritual Court for them; and if they sue a Prohibition, the Parishioners shall have a Consultation; and this Consultation may be sued by any of the Parishioners who will sue in the Spiritual Court. If the Bishop or his Official cite F any Man for laying violent Hands upon any Clerk, &c. if he sue a Prohibition, the other may have a Consultation; *Dummodo agitur ad pœnam corporalem, & non pecuniariam, &c.*

See 51. K.

If a Man in Time of the Vacancy of a Parsonage or Vicarage will G not pay his Tithes, and the Ordinary *ex officio* cite him to pay them, &c. if he purchase a Prohibition, the other shall have a Consultation granted unto him.

If an Abbot and Covent are bounden, by Reason of any Ordinance H lawfully made, to find four Chaplains to sing in such a Church or Chapel for the Souls of such or such, and if they fail to find them, they bind themselves in divers Pains and Censures; and if they fail in all or in Part to find these Chaplains, they have granted that the Dean of Salisbury, or his Official, shall interdict their Church, and so hold it until they have satisfied, &c. for which the Dean or his Official, *ex Officio*, cite the Abbot and Covent to find the said Chaplains, &c. if they



they sue a Prohibition, the Dean or Official shall have a Consultation in that Case.

**I** If the Ordinaries do forbid the Friars, that they shall not hear Confessions, nor they shall not admit any one to be buried in their Church, and sue them in the Spiritual Court for that Cause; if the Friars purchase a Prohibition, the Ordinaries shall have a Consultation.

**K** If a Man sueth in the Spiritual Court for taking and detaining from him his Wife lawfully married unto him, if the other sue a Prohibition for the same, he shall have a Consultation, forasmuch as for Restitution of his Wife only he sued, &c. And yet he may have an Action at the Common Law, *De Uxore abducta cum bonis viri*, or an Action of Trespafs for taking the Wife as it seemeth. See 51. I.

**L** And a Parson shall sue for a Pension of forty Shillings in the Spiritual Court, whereof the House hath been seized Time out of Mind, and shall have a Consultation thereupon, if a Prohibition be sued, &c.

**M** If a Man recover in the Spiritual Court in a Cause of Defamation Costs, he shall sue there for the Costs; and if the other sue a Prohibition, he shall have a Consultation.

**A** And if a Man have corporal Punishment in the Spiritual Court for a Cause of Defamation, or for laying of violent Hands upon a Clerk, &c. if the Party will redeem his Penance, and promise to pay unto the Party a certain Sum for his Damages, &c. if after he will not pay the Money unto the Party, the Party damnified may sue for the same in the Spiritual Court; and if the other Party purchase a Prohibition, he shall have a Consultation. [53.]  
12 H. 7. 22.

**B** If a Parson for an Offence have Judgment to be deprived in the Spiritual Court, and the Patron doth present another Parson unto the Ordinary, who sueth the first Parson in the Spiritual Court because he will not void the Church, but defend himself by Appeals, or other Matters, &c. now if the first Parson purchase a Prohibition, the other may sue a Consultation; or without any Prohibition sued by the first Parson, the Parson may sue a Writ in the Chancery unto the Spiritual Judge, to proceed in the Spiritual Court upon the Cause of Deprivation and Disability.

**C** Upon a Legacy given to any Order of Friars, they may sue the Executors in the Spiritual Court for the same. And if the Executors purchase a Prohibition, they may have a Consultation upon the Matter shewed, &c.

**D** If Friars, or other Persons whatsoever, sue in the Spiritual Court for a Legacy, and have Process against others as Witnesses in that Cause; if the Witnesses will sue a Prohibition surmising that they are sued against their Wills *ex Officio Judicis*, in the Spiritual Court, &c. yet he or they to whom the Devise is made shall have, upon the Matter shewed, a Consultation.

And note, that the Justices of the King's Bench may grant a Consultation of Tithes as well as the Chancellor.

And when the Justices grant a Consultation of Tithes of Spoliation, they make the Libel indorsed in such Manner:

R

*Dominus*

*Dominus Rex non habet cognoscere in Foro Ecclesiastic' de Spoliatione Decimarum, quatenus de 'Jure Patronat' seu de Advocacione Decimarum non agatur.* And so they give no Power by the Indorsment; and the Rule in the Register is by those Words :

*Nota*, that the Justices said, That Tithes shall not be but of such Things which increase from Year to Year, and that by the Manure of Man : But that is against the Decretals.

See 51. I.

52 M.

27 H. 8. 13.

ac. Br. Consultation. 7.

See 1 Cro.

446.

Register 55.

Br. Dismes

18.

And all the Justices are against a Consultation in a Cause of Defamation, because, it seems, he may have his Action at Common Law for the same Defamation.

Also of Coals, or of Quarries, or the like, a Man shall not pay Tithes nor of Agistment, because that he payeth Tithes for the Cattel which feed in the Pastures.

And also they say, that properly a Consultation ought not to be granted, but in Case where a Man cannot recover at the Common Law in the King's Courts.

And if the Bishop cite a Man *ex Officio* for to appear before his Officers for Fornication, &c. or such like Offences, and the Party defendeth himself by Appeals, or such other Delays, and by suing a Prohibition unto the Spiritual Court, and afterwards he waves the Delays, and submits himself to the Judgment of the Spiritual Court, and they delay to proceed in these Causes for the Vexation and Delays, and the Suing of the Prohibition which the Party had before; then the Party shall have a Writ directed unto the Spiritual Judges, that they do proceed *in casu Defamationis ad pœnam canonicam imponend'*, & *in causa Submissionis*, &c. *Provisio quod quicquid in juris nostri Regii derogation' cedere valeat aliquantulum, per vos nullatenus attemptetur.*

If the very Patron present an able Person to the Ordinary, and the Ordinary refuseth him, and afterwards a Disturber presenteth unto the Ordinary another Person unto the same Church, and the Ordinary doth admit, institute, and induct him, and afterwards the very Patron recovereth his Presentment against the Disturber; for which Cause the Presentee of the very Patron sueth the Presentee of the Disturber in the Spiritual Court, to avoid and remove him; for which Cause he sueth a Prohibition, &c. now the Presentee of the very Patron shall have a Consultation unto the Spiritual Court to proceed in that Case, &c. But first the Record in the Common Pleas ought to be certified into the Chancery of the Recovery, or of the Composition there made of the Title of the Presentment, before the Consultation shall be granted.

If the Tenants or Possessors of any Lands or Tenements within any Parish have used to find a Chaplain to say Divine Service in the Parish-Church, &c. Time out of Mind, &c. and afterwards they withdraw, and will not find such Chaplain, &c. then the Parson and Parishioners shall sue against them in the Spiritual Court, for to find such Chaplain in the Church: And if the Tenants or Possessors of the Land sue a Prohibition upon the Matter shewed in Chancery, the Parson and Parishioners shall have a Consultation to proceed, and by such Words: *Vobis significamus, quod in causa illa quatenus ad Cantariam præd' ad pristi-*



*num statum, &c. Et ad debitam punitionem occasione subtractionis hujusmodi eidem, &c. imponend' per vos agitur, licite procedere, Et ulterius facere poteritis quod ad forum Ecclesiasticum noveritis pertinere, dicta Prohibitione nostra, seu aliqua alia vobis in causa præd' imposterum dirigend', non obstante, &c.*

And if it be after Time of Memory, viz. in the Time of R. 1. and before the Statute of *Mortmain*, the Parson and Parishioners shall have such Suit for a Chantry, &c. And if a Parson and Parishioners sue one such Tenant and Possessor of the Lands to find such Chaplain, &c. and he sue an Inhibition from the Court of *Canterbury*, or appeal unto the Court of *Canterbury*, or make such subtil Delays in the Court of *Canterbury*; then the Parson and Parishioners shall have a special Writ unto the Archbishop and his Officers: *Quod in casu Et processu præd' coram vobis in Cur' Cant' virtute Appellationis præd' devolutis, quatenus ad Cantar' ad debitum statum reducere faciend', ad debitam punitionem occasione subtractionis hujusmodi eidem, &c. imponend' Et impon' faciend', Et ad dictam sententiam in ipsum latam, si rite deducta fuer', in suo robore permanere faciend' per vos agitur, rite procedere, Et ulterius facere poteritis, &c. dicta Prohib' nostra non obstante.*

[54.]

A If a Man devise an Ox or a Cow unto the Church for Reparation thereof, or for the Churchyard, and he who hath the Cow or the Ox will not deliver the same unto the Churchwardens; then the Ordinary *ex officio*, or the Churchwardens may cite him, and sue him for the detaining of the Cow or Ox: And if the other Party sue a Prohibition, the Churchwardens shall have a Special Consultation. *Vobis significamus, quod in casu præd' quatenus ad restitutionem eisdem Gardianis de Legat' præd', in forma præd', ac pœnam Canonicam eidem imponend' pro detentione eorund' coram vobis tantumvis agitur, licite procedere, Et ulterius facere poteritis quod ad forum Ecclesiasticum, &c. Prohibitione nostra non obstante.* And if he will not proceed upon that, they may sue an Attachment, &c.

B And in many Cases a Man shall have a Special Consultation. As, if a Parson sue in the Spiritual Court for Tithes of great Trees which pass the Age of 20 Years, and makes his Libel by the Name of *Silva cædua*; now the Party may shew in the King's Bench, or in the Chancery, that the Trees were great Trees above the Age of 20 Years; and upon this Surmise he shall have a Special Consultation to proceed, *ita quod de silva cædua*, and not of other Trees which are past twenty Years Growth, or the Age of twenty Years. And see the Statute for the same, Anno 45 E. 3. cap. 31.

C If a Man have a Chapel within his Manor which is a donative Chauntry, or presentable, and the Chaplain hath used to have the Tithes arising of the Demeans of the Manor Time out of Mind, &c. Now if a Parson (in whose Parish this Chapel is) sueth the Lord of the Manor, and also the Chaplain in the Spiritual Court, for the Tithes of the same Manor, they shall have a Prohibition, &c. because the Advowson of this Chapel may come unto the King by Wardship or Escheat, &c. And then the Parson within whose Parish this Ma-

See *Plow.*  
472. In *Mo-*  
*lin's Case.*  
*Plow.* com-  
mends this  
Form of  
*Scire facias*;  
but there is  
another  
Form used  
at this Day.

nor and Chapel is, shall have a Special Writ of *Scire facias* against the Lord of the said Manor, and also against the Chaplain, returnable in the Chancery at a certain Day, if they can say any Thing wherefore a Consultation shall not be granted, and the Writ of Prohibition revoked and repealed; and further to do as the Court shall award in that Case. And in the End of the Writ shall be, *Et habeas ibi nomina eorum per quos ei scire feceris, &c. & hoc Breve, &c.* Which Writ appeareth in the Register, in the End of the Writs of *Significavit*.

### Breve de Vi Laica removenda.

Old Na. Br.  
33 cont.  
and *Marrow*  
in his Read-  
ing.

**T**HIS Writ *de Vi Laica removenda* lieth as well upon a Surmise **D** made by the Incumbent, or by him that is (a) grieved, &c. without any Certificate thereof made in the Chancery by the Bishop, as upon a Certificate thereof made in the Chancery by the Bishop.

And when the Bishop makes Certificate into the Chancery of the **E** Force, then the Form of the Writ is such:

*Rex Vic' Linc', salutem. Ad requisition' venerabilis Patris Lincoln' Episcopi, tibi præcipimus, quod omnem Vim Laicam, quæ se tenet in Ecclesia de I. suæ diæcesis, ad perturbandum ipsum Episcopum, quo minus officium suum Spirituale in Ecclesia illa exercere possit, sine dilatione amoveas ab eadem, &c.* And he shall have an *Alias*, and a *Pluries*, and an *Attachment* against the Sheriff, directed unto the Coroners, if he do not serve or return the Writs.

And if the King do collate unto any Prebend of any Bishop come to **F** him by Title, and the Bishop make Resistance, that the King's Presentee cannot have the corporal Possession thereof; then the Writ shall be directed unto the Sheriff, and shall be such:

*Præcipimus tibi, quod omnem Vim Laicam seu armatam quæ se tenet in dicta Ecclesia, vel domibus eidem annexis, ad pacem nostram in Com' tuo perturband', sine dilatione amoveas ab eisdem; & si quos in hac parte resistentes inveneris, eos per corpora sua attachies, & in prisona nostra salvo custodias, ita quod eos habeas coram nobis in Octab' Sancti Hil', &c. ubicunque, &c. ad respondend' nobis de contemptu & resistentia supradict'. Et habeas ibi nomina eorum quos attachiaveris, & hoc Breve.* And this Writ **G** *de Vi Laica removenda* may be made returnable, or not returnable, at his Pleasure who will sue the Writ; and it may be returned into the Common Pleas as well as into the King's Bench.

And

(a) If one has a Writ to the Bishop, and a Disturbance of its Execution is made by the Incumbent, or any other, the Justices of C. B. may grant Remedy. But not if the Disturbance be after the Execution of

the Judgment. 12 H. 4. 26. Not upon a Suggestion. But upon a Suggestion of the Party grieved in the Chancery, he shall have this Writ.



**H** And note, that by this Writ the Sheriff ought not to remove the (a) [ 55. ] Incumbent who is in Possession of the Church, whether the Possession be of Right or Wrong, but only for to remove the Force, and to suffer the Incumbent for to enjoy the Possession: And if the Sheriff do amove, or would put out the Incumbent who is in Possession, the Incumbent shall have a Writ directed unto the Sheriff, commanding him that he do not put him out; and if he hath put him out, that without Delay he make him amends: And if he do not so do, the Party may have an *Alias*, and *Pluries*, and Attachment against the Sheriff. And the Form of the Writ de Vi laica removenda, without the Certificate is such:

**A** Rex Vic' S. salutem. Præcipimus tibi, quod omnem Vim Laicam, seu etiam armatam potentiam, quæ se tenet in Præbenda de E. in Ecclesia de C. ad pacem nostram perturband', sine dilatione amoveas ab ead': Et si quos tibi resistent' inveneris in hac parte, tunc assumi' tecum sufficien' posse Com' tui, si necesse fuerit, eos attachies per corpora cor', &c. ut supra.

**B** And the Form of the Certificate of the Bishop is such:

Excellentissimo Principi & Domino suo, Domino Henric' Dei gratia, &c. W. permissione divina Ebor' Archiepiscopus, Angl' Primas, salutem in eo per quem Reges regnant & cuncta subsistunt. Celsitudini vestræ Regiæ notum facimus per præsentem, quod quidam, salutis suæ immemores, possessionem Domini I. in Ecclesia de C. nostræ Dioc' canonice sibi collata, quam A. aliquando tenuit occupat', in nostr' offic' & libertatis Ecclesiasticæ & juris prædict' I. præjudicium, impediunt & perturbant: Idcirco Excellentia vestræ humiliter supplicamus, quatenus ad hanc vim & potestatem omnimod' amovend' brachium regalis potentia solita gratia apponatis, ut inimicor' Christi rebellio sic per vestrum reprimat' subsidium, ut libertas Ecclesiastica sub vestr' defensionis clypeo tuta maneat & illæsa, & vos a Deo exinde retributionem condignam consequi valeatis, qui vos Ecclesiæ suæ & populo per tempora conservet diuturna. Dat' apud B. quarto Kalend', &c.

## Writ of Waste.

**C** THE Form of the Writ of Waste against Tenant in Dower doth vary from the Form against other Tenants; for the Writ of Waste against Tenant in Dower is such:

Rex Vic', &c. Si A. fecerit to secur', &c. tunc sum' per bonos Sum' B. (b) quæ fuit uxor C. quod sit coram Justic' nostris apud West' in quinden' Trin', ostens. quare fecit Vastum, venditionem, destructionem, (c) & exilium in terris, domibus, boscis, gardinis, & hominibus, quæ tenet in dotem de hæreditate præd' A. in N. ad exhæredationem, &c. And in that Writ he doth

(a) And if he remove him, the Court of King's Bench shall award his Restitution, although it appears the Incumbent had no Title. M. 43 & 44 Eliz. Ascot ver. Batchellor.

(b) Where the Writ shall be against her by her proper Name. See 32 E. 3. Brief 265. 31 E. 3. Brief 326.

(c) Quare fecit vastum & destructionem in Terris & hominibus, adjudged good, without saying Exilium. 2 H. 6. 11.

doth not rehearse the Statute which gave the Writ of Waste, (a) nor the Writ of Waste against the Guardian, because they were punishable at the Common Law, before the Statute, by Prohibition and Attachment thereupon, if they did Waste. And *exilium in Dominibus* shall not be put in the Writ of Waste, if the Tenant in Dower, or other Tenant, do not misuse the Villains of the Manor, by Reason whereof they depart from the Manor, or from their Tenures; and if they do, then it is Waste. And in a Writ of Waste against Tenant for Life or Years, he shall recite the Statute in such Form:

*Rex Vic', &c. Si A. fecer' te secur', &c. tunc sum' B. &c. quare cum de communi concilio regni nostri Angl' provisum sit, quod non liceat alicui Vastum, venditionem, seu destructionem facere in terris, domibus, boscis, seu gardinis; idem B. de terris, domibus, & gardinis in L. quæ (b) prædict' A. ei dimisit, &c. fecit Vastum, &c.*

29 E. 3. 15.

Et 3 Ma.  
Dyer 129.

And if an Abbot bring a Writ of Waste against Tenant in Dower, D the Writ shall be, *Ostendit. quare fecit Vastum in terris, &c. quas tenet in dotem de jure Ecclesiæ ipsius, ad exheredationem (c) Ecclesiæ suæ, &c.* And

(a) Of Pleadings and Process in Waste.] The Defendant pleads a Plea in Bar, which does not acknowledge the Waste, as a Grant to hold without Impeachment of Waste, &c. if there be a Demurrer thereto, and it is ruled against him, yet the Sheriff ought to inquire of the Waste and Damages; per Thorpe: And therefore he may after the Demurrer traverse the Point of the Writ, and plead no Waste done. 38 E. 3. 24. a. b. The Plaintiff, in Maintenance of his Writ, tenders an Averment, that the Tenant refuses, this is peremptory against the Tenant. 6 H. 4. 5. a. b. In Waste against two, one makes Default, and the other appears, who thereupon is put to answer. 4 E. 3. 33. 39 E. 3. 19. 12 H. 4. 5. b. *Quære*, If a Writ of Inquiry shall be awarded? If *Nihil* be returned on the Summons, Attachment and Distress, and the Tenant makes Default, the Waste shall be inquired. 12 H. 4. 4. 21 H. 6. 56. Where the Writ of Inquiry is of a Waste in two Vills, the Jurors ought to view both the one and the other; but it is sufficient, tho' the Inquiry be taken at any other Place. 12 H. 4. 9. b. In Waste against two, one makes Default at the grand Distress, the other appears; a Writ of Inquiry shall not be granted, for one cannot answer without the other. 14 H. 4. 37. See the contrary to this, *supra*.

*Note*; In Waste in the *Tenet*, the Summons shall be in *Terra petita*, although in Truth another Person is Tenant; as if one does Waste, and afterwards grants over his Estate, and upon the Distress Issues

shall be returned on this Writ. But if it be in the *Tenuit*, although the Sheriff on every Writ returns *Nihil*, yet a Writ to inquire of the Waste shall issue. 11 H. 6. 4. a. 12 H. 4. 4. a. and 21 H. 6. 56.

In Waste by *Darrel* against *Leyburn*, Judgment was on a *Nihil dicit*. Now if the Plaintiff will release the Damages he shall have Judgment for the Place wasted. *Quære*; For a Writ shall issue to inquire of the Damages, but not of the Waste, for that is acknowledged. And by the same Case, the Sheriff need not find Deer on the Place wasted. *Dyer* 204.

*Note*; In Waste in *Domibus*, *Boscis*, &c. the Plaintiff may abridge the Waste assigned, so that he do not falsify his Writ; and therefore he cannot abridge the whole Waste supposed in *Domibus*. *Dyer* 272. b.

On a Writ of Inquiry of Waste on Judgment by Default, the Jury may find no Waste done. 19 E. 3. *Waste* 30. 3 H. 6. 296. per *Martyn*.

(b) *Note*; If *A.* and *B.* Jointenants, or Parceners, make a Lease for Life or Years, and *A.* dies without Issue, *B.* may have Waste against the Lessee, supposing that he himself had leased the Estate. 46 E. 3. 17. a. 35 H. 6. 29. a. per *Prisot*. But if Waste be brought, supposing that *A.* and *B.* leased to the Defendant for Life, Remainder to the Plaintiff: It seems a good Plea, that *A.* leased it sole, *absque hoc*, that *A.* and *B.* leased it. 6 H. 4. 5.

(c) *Ad Exheredationem Episcopi vel Ecclesiæ*. 2 Mar. *Dyer* 129.



And shall not say, *de hæreditate ipsius Abbat'*, nor *ad exhæredationem ipsius Abbat'*, &c. But if the Heir bring a Writ of Waste against the Tenant for Life of his Ancestors, then the Writ shall suppose that the Tenant holdeth *de hæreditate*, &c. and that the Waste is done *ad exhæredationem suam*, &c. and that they have made Waste of Lands they hold in Dower of the Wife, yet the Husband doth not hold in Dower.

**E** (a) And the Writ of Waste shall be always brought against the Tenant in Dower, or Tenant by the Curtesy, although they have granted over their Estates unto others.

**F** If the Husband make a Feoffment of his Land, or a Stranger doth abate after the Death of the Husband, or disseiseth the Husband in his Life-time, and afterwards the Wife recovereth her Dower against the Stranger, &c. if he bring a Writ of Waste against the Wife, the Writ shall make Mention of the Recovery, &c. how she recovered the Land against him.

**G** If a Feme hold in Dower of the King who hath the Reversion, and <sup>20 H. 6. 28.</sup> the King granteth the Reversion in Fee unto a Stranger, and afterwards the Feme committeth Waste; now the Grantee shall have a Writ of Waste, and the Writ shall make Mention how she holdeth of the King, and how he hath granted the Reversion unto a Stranger, &c. and that she who held in Dower of the Stranger of the King's Grant hath committed Waste, &c. So if the Husband dieth, and the Heir maketh a Feoffment unto a Stranger in Fee, who assigneth Dower unto the Wife, and she commits Waste; the Writ shall make Mention that she held in Dower of the Gift of her Husband by the (b) Assignment of a Stranger, of whom the aforesaid Feme held in Dower of the Assignment which <sup>3 & 4 Eliz.</sup> the Heir of the Husband hath made to the said Stranger, *ad exhæreda-* <sup>Dyer 206,</sup> *tionem* of him who bringeth the Writ. The Form of the Writ of <sup>208.</sup> Waste where the Wife is endowed *ex assensu patris* is such:

*Rex*

(a) *Note*; 30 E. 1. 16. Tenant in Dower grants her Estate to the Heir under Age, and a Stranger, rendering Rent on Condition of the entry for Non-payment. Waste is made. the Heir disagrees, the Tenant in Dower re-enters for Non-payment, the Heir brings Waste. If the Heir at the Time of, or during the Waste done, took any of the Profits, &c. the Waste is not punishable. But if the Heir never took any of the Profits, Waste lies against the Tenant in Dower after the Disagreement. See 38 E. 3. 25, 29.

The Husband levies a Fine and takes back an Estate for Life, Remainder to his Son in Tail, and dies; the Son endows his Mother, who assigns over her Estate; the Son brings Waste against her, as Tenant in Dower; and adjudged that it lies; but it seems also, that he shall have a general Writ, supposing that she held in

Dower of his Heritage. 26 E. 3. 76. and yet he may have a Writ making Mention of the Recovery; but such Writ shall suppose that she held of his Heritage; and it seems good, as well as in Case of a Feoffee, or where the Disseisor of the Husband assigns Dower. 38 E. 3. 23. 14 E. 3. *Breif* 273, 282. *vide infra* G.

(b) If A. makes a Lease to B. to commence at a Day to come, and then A. enfeoffs C. and C. enfeoffs D. before the said Day; and afterwards B. enters and does Waste, the Writ shall be *in Terris quas tenet ad Terminum annorum de prefat' D. ex assignatione C. de quo idem B. tenuit ad eundem Terminum ex assignatione A. &c.* although there was no Tenure before the Term commenced. *Dyer* 206. *Darrel* ver. *Leyborn*. And so it is if the Lessor enters on the Lessee and makes Livery, &c. 5 H. 5. 12

[56.] *Rex, &c. Si S. &c. tunc sum', &c. quæ fuit uxor R. quod sit, &c. ostens. quare fecit Vastum, &c. qu' tenet in dote de dono præd' R. quendam viri sui, ex assensu A. de B. patris prædicti R. de præf. S. ex assignatione ejusd' A. &c.* And if the Wife do recover her Dower against the Father, then the Writ of Waste shall make Mention of the Recovery thus: *Et quod eadem Isabella in Cur' nostra coram Justic' nostris de Banco per considerationem ejusd' Cur' recuperavit, ut dotem suam, versus præf. A. ad exhæred' ipsius S. &c.* And the Writ may be of Mills and Vivaries; and then the Writ shall be, *ostens. quare fecit Vast' de terris, domibus, molendinis, boscis, vivariis, & gardinis.*

And if a Guardian in Chivalry grant over his Estate, who maketh A Waste, the Writ of Waste shall be brought against the Grantee, and not against the Guardian; and it is not like Tenant in Dower, or by the Courtesy (a): But if the Guardian do commit Waste, and afterwards granteth over his Estate, then the Heir shall have an Action of Waste against the Guardian, and not against the Grantee. And so if Tenant for Life or Years commit Waste, and granteth over his Estate, the Writ lieth against him who doth the Waste, and not against his Grantee. And the Form of the Writ against the Guardian is such: *Rex, &c. Si A. fecerit, &c. tunc sum', &c. quare fecerit, &c. quæ habet vel habuit in custodia de hæreditate, &c. ad exhæredationem, &c.*

40 E. 3. 33.  
Finchden.  
41 E. 3. 23.  
Candish.  
42 E. 3. 19.  
per Curiam.  
24 H. 8. 14.  
20. ac.

And against the Executors of the Guardian the Writ is, *Sum', &c. B. B. & C. (b) Executores Testamenti de, &c. quare fecer' Vastum, &c. quas habent in custod' post mortem præd' B. de hæred', &c. ad exhæred', &c.*

20 H. 6. 1. ac. In a Writ of Waste against Tenant by the Curtesy, the Form of the C Writ by the Register is to recite the Statute; and yet it seemeth the Writ is good, although that he doth not recite the Statute; and the Form of the Writ is:

*Rex, &c. Si A. fecerit, &c. tunc sum', &c. quare cum de Com' concilio regni nostri Angl' provisum sit, quod non liceat alicui Vastum, venditionem, seu destructionem facere in terris, domibus, boscis, seu gardinis sibi dimissis ad terminum vitæ vel annorum, seu de illis quæ per legem terr' tenent; idem B. de domibus quas tenet per legem Angl' de hæreditate præd' A. in N. fecit Vastum, ad exhæredationem ipsius A. & contra formam provisionis præd', ut dicitur. Et habeas, &c.*

And if the Heir grant the Reversion of Tenant by the Curtesy unto D another in Fee, and the Tenant attorn, &c. then the Form of the Writ is such:

(c) *Rex, &c. Si Abbas de B. &c. fecerit, &c. tunc sum' B. &c. quare cum, ut supra, idem B. de domibus in N. quas tenet ad vitam suam de præf.*

(a) See accordant 17 E. 3. 13. 43 E. 3. 15. 43 E. 3. 8. 30. 7 E. 3. 13. sed contra 26 E. 3. Wast 10. 27 H. 6. 7. 81.

See the Statute 11 H. 6. Wast 9. post. 80. C. 40 E. 3. 33. 42 E. 3. 23. 44 E. 3. 21. 48 E. 3. 19. 12 H. 4. 4.

(b) Note 38 E. 3. 17. Waste against the Executors of A. where in Truth the Defendants were Executors of B. who was the Executor of A. and the Defendants never administered in the Life of B. the Writ shall abate.

(c) See the Writ adjudged good. 32 E. 3. Brief 348.



*præf. Abbate, quas A. de quo idem B. illas tenuit per legem Angl' de hæreditate ipsius A. assign' inde præf. Abbati, fecit Vastum, &c.*

**E** (a) And if the Heir granteth the Reversion unto another Stranger in Fee, and the Tenant by the Curtesy doth attorn, and afterwards granteth over his Estate by the Curtesy to another Stranger, and afterwards that Stranger committeth Waste; now the Grantee of the Reversion shall have his Action of Waste against the Grantee of the Tenant by the Curtesy, for he cannot be Tenant by the Curtesy, if not of the Heir, &c.

**F** But if the Tenant by the Curtesy grant over his Estate unto a Stranger, and the Grantee commit Waste, the Heir shall have the Action against the Tenant by the Curtesy, and not against the Grantee who committeth the Waste. But if the Heir have obtained or granted the Reversion in Fee, &c. and after the Tenant by the Curtesy attorn, and after grants over his Estate unto a Stranger who committeth Waste; now the Grantee of the Reversion shall not have an Action of Waste against the Tenant by the Curtesy, (b) but against the Grantee of the Tenant by the Curtesy. And if a Feme be Tenant in Dower, and she grant her Estate unto a Stranger, and after the Heir granteth the Reversion in Fee unto another, and the Tenant attorneth, and after the Tenant for Term of Life commits Waste; it seemeth that the Grantee in Reversion shall have an Action of Waste against the Grantee of the Tenant in Dower, as he shall have against the Grantee of the Tenant by the Curtesy. The Form of the Writ of Waste against the Tenant for Life or Years is such:

11 H. 4. 18.  
10 H. 4. Attornment 16.  
The Attornment of Tenant in Dower is good.

**G** *Rex, &c. Si A. fecerit, &c. tunc sum' B. &c. Cum de communi concilio, &c. in terris, &c. sibi dimissis ad terminum vitæ vel annorum; idem B. de terris, domibus, boscis & gardinis in L. quæ præd' A. præf. B. dimisit ad vitam ipsius B. Or thus, Quæ F. pater vel mater, vel aliq' Antecess. præd' A. cujus hæres ipse est, præf. B. dimis. ad terminum annor', fecit Vastum, &c. ad exhæredationem, &c. & contra formam provis. præd', ut dic' ; & habeas, &c.*

**H** And by the Statute of *Marleb. cap. 23.* it is ordered, *Quod Firmarii, &c. non fac' Vastum in domibus, &c. vel exil' de hominibus.* By which Statute the Writ of Waste *de Exilio hominum* is warranted, &c.

11 E. 3. West. 113.

**I** In a Writ of Waste, if the Premises of the Writ recite *Quod non liceat alicui facere Vastum in domibus, boscis, & gardinis*; in the End of the Writ it is said, that the Defendant hath done Waste in Lands, Houses, Woods, Gardens, and Exile of Men; so as there is more in the End of the Writ than is in the Premises, yet the Writ is good: And so if less be in the End of the Writ than is recited in the Premises, yet the Writ is good. As if it be recited, *Quod cum provisum sit, quod non liceat alicui facere Vastum, &c. in terris, domibus, boscis, & gardinis*; and in

S

(a) And the Distress shall be in the Land leased. 12 H. 4. 4. 21 H. 6. 56. b. ult.  
(b) But if the Husband's Feoffee endows the Wife, and she assigns over her Estate, Waste lies for him against the Wife: For

the Plaintiff shall not suppose in his Writ, that she held in Dower of him *ex assignatione*, but only that she held in Dower of his Heritage. 38 E. 3. 23. adjudged.

[57.] the End it is recited, *Quod Defend' fecit Vastum in terris* only, or *in boscis* only, or *in domibus* only; yet the Writ is good.

If an Abbot make a Lease for Life or Years, and dieth, and the A Lessee afterwards committeth Waste, the Writ shall be such: *Rex, &c. Si Abbas, &c. tunc sum' B. Quare cum de communi concilio, &c. idem B. de domibus in L. quas præd' Abbas, &c.* (if the Abbot himself maketh the Lease;) and if his Predecessor made the Lease, then thus: *Quas R. quondam Abbas, &c. prædecessor præd' nunc Abbatis, præf. B. dimisit ad vitam ipsius B. vel ad terminum annorum* (if the Case be so) *fec' vastum, &c. ad exhæredationem Eccl' ipsius Abbatis.* And the like shall be for a Prior, or Master of an Hospital.

And against the Executors the Writ shall be, *Sum' I. & K. Executores B Testamenti L. quod sint, &c. iidem Executores de terr' quas præf. A. præd' L. dimisit ad terminum annor', fec' Vast', &c.*

And if a Man make a Lease to a Feme Sole of Chafes, and she take C Husband, and the Lessee dieth, and she and her (a) Husband commit Waste; the Writ for the Heir shall be thus:

*Rex, &c. Si A. fec', &c. tunc sum' B. & C. ux' ejus, quod, &c. quare cum, &c. iidem B. & C. de vivariis in L. quæ tenent ad vitam ipsius C. ex dimissione quam F. pater præd' A. cujus hæres ipse est, inde fecit præf. C. fec' Vastum, &c.*

And another Writ for the Heir: Where Land is leased to Husband and Wife, and the Heir, and the Husband dieth, and the Wife cominiteth Waste, the Writ shall be, *Eadem A. de domibus in L. quas tenet ad vitam suam, ex dimissione quam W. inde fecit eidem A. & præf. B. quond' viro suo, & hæred' ipsius B. patris præd' H. cujus hæres ipse est, fecit Vastum, &c.*

And another Writ: When a Gift is made unto the Husband and Wife, and unto the Heirs of the Body of the Wife, and the Wife dieth, and the Husband committeth Waste, the Heir shall have a Writ of Waste, and the Writ shall be,

*Idem A. de domibus in B. quas tenet ad vitam suam, ex dimissione quam W. inde fec' præf. A. & M. quondam uxori ejus, & hæred' de corpore ipsius M. matris præd' B. cujus hæres ipse est, exeuntibus, fecit Vastum, &c. contra formam, &c.*

And if a Man leaseth Lands for Term of Life, and hath three or D four Sisters, and dieth, and they make Partition of the Lands, and of the Reversion, and the Tenant for Life commiteth Waste; that Sister and her Husband who hath the Reversion shall have a Writ of Waste, and the Writ shall be,

*Rex,*

(a) See 16 E. 3. 68. b. And if the Father makes a Lease to the Feme for Life, and dies, and the Son confirms it to her and her Husband for their Lives; yet Waste lies *quod teneat ad terminum* of their Lives, *ex dimissione* of the Son. 6 E. 3. 19. See 46 E. 3. 25. b. A Feme Lessee for Life takes Husband. Waste shall be in the *Tenet* as here, although they grant *over* their Estate af-

ter the Waste committed. But if a Feme Lessee *pur auter vie* takes a Husband and commits Waste, and *Cestuy que vie* dies, the Writ shall be *quas le Fem tenuit*. *Quare*, if she makes a Lease for Years; for in such Case after the Feme's Death, Waste does not lie against the Husband in the *Tenit*. 10 H. 6. 11. *Quare*, if he makes the Lease for Years, *si eadem Lex*.



Rex, &c. Si A. de B. & M. ux' ejus fec', &c. tunc sum', &c. F. &c. quare cum de communi concilio, &c. idem F. de domibus, &c. in L. quas tenet ad vitam suam, ex dimissione S. de C. de purparte ipsius M. ipsam de hæreditat' quæ fuit ipsius S. fratris sui, cujus una hæred' ipsa est, per partitionem inter ipsas M. A. & B. sorores ejus S. inde factam, conting' fecit Vastum, &c. Or thus: Idem F. de domibus in L. quas tenet ad vitam suam de præf. M. ex dimissione A. patris præd' M. cujus una hæred' ipsa est, de purparte ejusd' M. ipsam de hæreditate præd' A. conting', fec' Vastum, &c. And if Tenant for Term of Life grant over his Estate unto another, and the Grantee committeth Waste, the Writ shall be,

E Rex, &c. Si B. fecerit, &c. tunc sum' A. &c. idem A. in domibus in N. quas tenet ad vitam I. (a) ex dimissione quam idem I. cui præf. B. illas dimisit ad eundem terminum, inde fecit præf. A. fecit Vastum, &c. And if Tenant for Term of Life grant over his Estate, and the Grantee granteth over his Estate, then the Writ shall be thus,

Rex, &c. Si M. de R. Præbendarius Præbendæ de F. in Eccl' beati Petri Ebor', fecerit, &c. tunc sum' R. &c. quare cum, &c. idem R. de domibus in L. quas tenet ad terminum vitæ A. quæ fuit ux' H. de N. ex dimissione M. de O. qui ill' tenuit ad eundem termin' ex dimissione ipsorum H. & A. cui quidem A. & M. de O. quondam viro suo, W. B. quondam Præbendarius præd' Præbendæ, predecessor præd' Præbendarii, ill' dimisit ad vitam eorund' M. de O. & A. fec' Vastum, &c. ad exhæredation' Præbend' ipsius R. & contra formam provisionis præd', &c.

F And by that it appeareth, that if a Prebendary or Parson maketh a Lease for Term of Life, he or his Successor shall have an Action of Waste. If M. leaseth Lands unto I. for Term of Life, and dieth, and L. Son and Heir of the said M. granteth the Reversion unto H. in Fee, and H. granteth this Reversion unto A. in Fee, and afterwards the Tenant for Life committeth Waste; now the Writ of Waste brought by A. shall be such: 10 H. 7. 5.

Rex, &c. Si A fec', &c. tunc sum' I. &c. quare, &c. id' I. de domibus in L. quas tenet ad vitam suam de præf. A. ex assignatione A. de quo idem I. illas tenuit ad vitam suam, ex assignatione quam L. filius & hæres M. qui ill' præf. I. dimisit ad eund' terminum, inde fecit eid' H. fecit Vastum, &c.

G If S. and K. his Wife seised in Fee, lease the Land unto O. for Term of Life, and afterwards S. dieth, and D. takes H. to Husband, and K. granteth the Reversion unto A. in Fee, and afterwards D. attorneth, and committeth Waste, and A. bringeth Waste, the Writ shall be,

Rex, &c. Si A. fecerit, &c. tunc sum', &c. B. quod sit, &c. idem B. de domibus in N. quas tenet ad vitam suam de præf. A. ex assignatione quam H. & K. ux' ejus, quæ quidem K. & S. quondam vir suus, illas præf. B. dimi-

H ser' ad eundem terminum, inde fecer' præf. A. fecit Vastum, &c. If N. leaseth Lands for Years unto F. which F. maketh I. his Executor, and dieth, and I. leaseth the Lands unto R. and afterwards N. granteth the Reversion in Fee to P. and P. granteth the Reversion to M. in Fee, and

S 2

after

(a) See ex dimissione Legationis vers. le assignationem. 10 H. 6. 8.

after R. Tenant for Life, commiteth Waste; the said M. shall have a Writ of Waste, and the Writ shall be (a),

[58.]

Rex Vic', &c. Si M. fecerit, &c. tunc sum', &c. R. quod sit, &c. quare cum, &c. id' R. in domibus in L. quas tenet ad termin' annor', ex dimiss'. I. Exec' Testam' F. cui N. illas dimisit ad eund' terminum præf. M. ex assign' P. de quo idem R. ill' tenuit ad eund' termin' ex assign' quam præd' N. inde fecit præf. P. fecit Vastum, &c.

F. leased Lands unto E. and A. his Wife, and unto the Heirs of A. E. and afterwards E. dieth, and B. his Son and Heir granteth the Reversion unto C. in Fee, and afterwards A. commiteth Waste; the Writ shall be (b),

Rex, &c. Si C. fecerit, &c. tunc sum' A. &c. quare cum, &c. idem A. in domibus in B. quas tenet ad vitam suam de præd' C. ex assign' quam B. filius & hæres E. cui præf. A. quondam ux' sua, F. illas dimisit, habend' eisd' E. & A. & hæ' ipsius E. inde fecit præf. C. fecit Vastum, &c.

M. leaseeth Lands for Life unto C. and A. her Husband, and A. dieth, B. and C. taketh to Husband T. of F. and T. and C. his Wife lease the Lands unto P. of F. who leaseeth the Lands unto J. and afterwards M. granteth

(a) Note the Form of the Writ: *Distingas A. ad respondend' B. & C. uxor' ipsius quare cum de communi concil', &c. idem A. de Terris Domibus Boscis & Gardinis in M. que tenet ad vitam suam ex dimissione quam D. qui Tenementa prædict' de prædict' B. & C. tenet inde fecit præfatis A. & E. nuper uxori ejus & hæredibus de corpore ipsius E. exeuntibus, ita quod si contingat præfat' E. sine hæredibus de corpor' suo exeun' obire prædicta Tenementa F. & hæredibus suis remanerent, & que post mortem præd' E. que obiit sine hæred' de corpore suo, & que post mortem prædict' F. ad præfat' B. & C. reverti debent tanquam escaeta sua eo quod præd' F. Bastardus fuit & obiit sine hærede de se, &c. fecit Vastum venditionem & destructionem ad exhæredationem ipsius C.*

Exception 1. That there was no Privy between the Plaintiffs and Defendants, so as to say in *Terris que de iis tenet; sed non allocatur per Cur'*. For that by the Escheat of the Remainder, the Seignior is extinct; and the like of a Tenure determined. And if F. was to bring the Writ of Waste, he shall not suppose a Tenure, for that the Lessee for Life does not hold of him in Remainder, and a *fortiori* not of the Lord who has the same Remainder by Escheat; and yet if he in Reversion brings Waste, he must suppose a Tenure.

Except. 2. For that the Writ is *& que post mortem E. & F. reverti debeant*, where by the Writ he supposes a lawful Estate for

Life in A. the Defendant, and so it is repugnant. *Sed non allocat'*. For here he only conveys to himself a Title to the Reversion, and not *ad Demesne*; and therefore this would be a good Exception in a Formedon, but not here. Also by—the Writ is good, although those Words *post mortem* had been omitted, and so it is Surplusage.

Except. 3. For that it was *reverti debeat* to the Husband and Wife, where it should have been to the Wife only. *Sed non allocatur*. For it cannot revert to the Wife, without reverting to the Husband: So in a *Cessavit* or *Formedon in Reverter*.

Except. 4. For that it should have been laid, as escheated from the Wife, and not from the Husband and Wife. *Sed non allocatur per Cur'*. 3 H. 6. 1. 2.

Yet note; The Writ ought to be *ad exhæredationem* of the Wife, or else it shall abate. 8 H. 6. 9. a. See for this, 27 H. 8. 13. Dyer 90. 18 E. 2. Fitz. Brief 835.

(b) See a good Form of this Writ by the Assignee of a Reversion, against the Assignee of a Term. Dyer 208. viz. A. leases to B. for Years, and grants the Reversion to C. who grants over to D. and B. grants his Term to E. Who commits Waste in *Domibus, &c. quas tenet ad Term' annor' ex dimissione B. cui prædict' A. ad eundem Terminum dimisit de præfat' L. ex assignatione C. de quo idem B. tenuit ad eundem Terminum ex assignatione quam A. eidem fecit*.



granteth the Reversion unto R. (a) (b) in Fee, and J. commiteth Waste, and K. bringeth a Writ of Waste; the Writ shall be such:

*Rex, &c. Si R. fecerit, &c. tunc sum' J. &c. quare cum, &c. eadem J. in domibus vel terris quas tenet ad vitam C. ux' T. de F. de præf. R. ex assign' M. de quo P. de H. quæ ill' præf. J. ad terminum illum dimisit, ill' tenuit ad eund' terminum, ex dimissione præd' T. & C. cui quidem C. & A. quondam viro suo, præf. M. ill' dimisit ad vitam eorund' A. & C. inde fecit præf. R. fecit Vastum, &c.*

(b) R. leaseth Lands unto Amice and J. her Husband, for Term of their Lives, the Remainder to N. Daughter to J. D. for Term of her Life, the Remainder to the right Heirs of J. D. and afterwards T. (right Heir of J. D.) granteth that Remainder unto B. of C. in Fee, and afterwards J. (Husband of Amice) dieth, and she commiteth Waste; the Writ of Waste shall be such,

**C** *Rex, &c. Si B. de C. fecerit, &c. tunc sum', &c. Amic', quæ fuit uxor, &c. quare cum, &c. eadem Amicia in boscis, &c. quos tenet ad vitam suam de præf. B. de C. ex assign' quam T. conf. & hæres J. D. de quo eadem Amicia illos tenuit ad eund' termin', ex dimiss. quam R. inde fecit præf. A. & J. quondam viro suo, ad vitam eorund' A. & J. ita quod post mortem eorund' A. & J. præd' bosci N. filia J. D. ad totam vitam suam ulterius remaner', & post mortem ipsius N. iidem bosci rectis hæres præd' J. D. remaner', inde fecit præf. A. fecit Vastum, &c.*

(b) And by this Writ it appeareth, that he in the Reversion shall Co. Lit. 54.a. have a Writ of Waste against the Tenant for Life, where there is a Post. 59. H. mean Estate in Remainder for Life to another.

**D** There is another Writ of Waste in this Form:

*Rex, &c. Si J. & C. fec', &c. tunc sum', &c. J. &c. quare, &c. eadem J. de omnibus, &c. quas tenet ad vitam suam per Finem inde in Curia nostra coram W. de C. & Sociis suis Justic' nostris de Banco per Breve nostrum inter præd' C. & J. R. de P. levat', & quæ post mortem præd' T. & J. præf. C. & J. & hæred' de corpor' eorund' J. & C. exeunt', remaner' debent per formam Finis præd', fecit Vastum, &c.*

**E** And if a Man leaseth Lands for Term of Life unto E. the Remainder to M. for Life, and afterwards granteth the Reversion in Fee to one B. Father of R. whose Heir the said B. is; and afterwards the first Tenant for Life dieth, and the Tenant in Remainder entreth, and commiteth Waste; now the Writ shall be,

*Rex, &c. Si R. fec', &c. tunc sum', &c. J. de C. & M. ux' ejus, &c. quare cum, &c. iidem J. & M. in terris quas tenent ad vitam ipsius M. de præf. R. ex assign' quam J. de C. quæ terram præd' J. de E. ad totam vitam suam, ita quod post mortem ipsius J. de E. eadem terra præf. M. ad totam vitam suam habend' remaner', dimisit, inde fecit B. patri præd' R. cujus hæres ipse est, fecer' Vastum, &c.*

And

(a) *Contra*, if the Reversion was granted for Life, by Hill and Parning. 11 E. Resceit 118. yet Waste was against a Tenant for Years, living him in Remainder for Life. 27 E. 3. 87.

(b) See for this 20 H. 6. 36. That Waste does not lie in such Case, till after the Death or Surrender of the particular mesne Estate. See Co. Litt. 59. a.

And there are other Forms of Writs in the Register which are not F mentioned here for the Length of them; *ideo quare librum.*

3 H. 6. 1.  
Nota.

21 E. 3. 3. &c.  
27 contra.  
16 E. 3.  
West. 100.  
contra.

And there is another Form of Writ of Waste for the Lord by Escheat, G who hath the Reversion by Escheat, &c.

(a) And there is a Writ of Waste in the Register for him in the Re- H version against Tenant by *Elegit*, who hath Lands and Tenements in Execution for Debt or Damages. And so against Tenant by *Elegit*, who hath Lands in Execution by Recognisance of Debt: And also against his Executor who hath Lands in Execution by *Elegit*. And it seemeth to stand with good Reason that the Action doth lie.

But some say, that he against whom the Execution is sued shall not have an Action of Waste, because he may have a Writ of *Venire facias ad computandum*, &c. and there the Waste shall be recovered in the Debt; but by the Action of Waste he shall recover treble Damages, and so it seemeth he shall not do by that Writ of *Venire facias ad computandum*.

(b) And also if a Man hath Lands in Execution by *Elegit*, and afterwards he in the Reversion granteth the Reversion unto a Stranger in Fee; that the Grantee shall have an Action of Waste against the Tenant by *Elegit* seems reasonable; because the Waste is to his Disinheritance, and he ought not to satisfy the Debt due by the Grantor.

And see 21 E. 3. in Title *Scire facias*, whether Recognisor had a I *Scire facias* upon his Surmise that the Recognisee had levied all the Debt by cutting of Trees.

[ 59.]

If a Man have Common of Estovers in the Woods of another, and he who is Tenant and Owner of the Wood cutteth down all the Wood, he who ought to have the Estovers shall not have an Action of Waste, but shall have an (c) Affise of his Estovers: For the Action of Waste doth not lie but upon a Lease made, or against Tenant by the Curtesy, or Tenant in Dower, or Guardian.

(d) If Guardian in Chivalry commit Waste, the Heir shall have an A Action of Waste as well at full Age as within Age.

And if a Man be in Ward unto the Lord by Reason of the Use of Lands, because that certain Persons were seised in Fee of the Lands holden by Knight's Service unto the Use of his Father and his Heirs;

Note, 12 H. 4. 3. per Hankford, in a Writ of Waste the Writ doth not recite the Statute, which proves that a Prohibition was against the Guardian at the Common Law.

now

(a) N. E. ante. 37 H. contr. So 19 E. 3. Waste 31. 16 E. 3. Waste 20. A *Scire facias* was against a Tenant by *Elegit* who had cut Trees, to pay the Residue of the Money, to answer for the Trees cut, and for the Plaintiff to have his Land again. Cur'. By the Statute against Cutting Trees, this is in Nature of a Trespass, and lies not in Account. Nor is he punishable by this Writ (of Waste) but in an Action on the Case only. 21 E. 3. 26.

4  
(b) See *supra*, and Note, he cannot in a *Scire facias* compel him to answer to the Waste and Cutting of the Trees, and therefore it was waived. 21 E. 3. 30. b. See F. N. B. 104. noted that Waste lies *Quare*.

(c) See 4 E. 4. 2. 11 E. 4. 11. 32 E. 3. Waste 36.

(d) Note; Waste does not lie against Guardian in Socage, but only Account or Trespass, according to the Nature of the Waste. Adjudged 16 E. 3. Waste 100. vide *infra* E.



now if the Guardian commit Waste, the Heir within Age, or of full Age, shall have the Action of Waste against the Guardian, and yet the Heir hath not the Reversion of the Lands, but the Use only. But that is given by the Statute of 4 H. 7. cap. 17.

And if the Guardian do commit Waste, he shall lose the Wardship; and if the Wardship be not sufficient to answer the Damages for the Waste, then he shall render Damages unto the Value over and above the Loss of the Wardship, by the Statute of Gloucester, cap. 5.

**B** If the King commit the Wardship of the Heir in Ward unto another, and the Committee doth Waste; then upon a Surmise made thereof in Chancery, the King shall send a Writ unto the Escheator, to go to the Land, and see if Waste be done, and to certify the King thereof in the Chancery.

(a) If Escheators do commit Waste in Lands which they have in their Hands in Custody; the Heir within Age, or of full Age, shall have an Action of Waste, and shall recover treble Damages against them, and they shall suffer Imprisonment two Years at the least, at the King's Pleasure. And so if Escheators do commit Waste in other Lands seized into the King's Hands by Enquest of Office. Anno 36 E. 3. cap. 13.

(b) And Escheators, or other Guardians of Lands, in the Vacation of the Temporalities of Bishopricks or Abbies, shall do no Waste, &c. Anno 14 E. 3. pro Clero, cap. 4 & 5.

**C** And if Tenant for Term of Life, or in Dower, or by the Curtesy, or for Years, grant over their Estate to divers unknown Persons, &c. to defraud him in the Reversion, and afterwards Waste is committed; he in the Reversion shall have an Action of Waste against the first Tenant who took the Profits, &c. Anno 11 H. 6. cap. 5.

**D** There is another Writ of Waste which lieth betwixt two Tenants in Common of Lands, or a Wood in Fee-simple, and the Form of the Writ is such: 1 Inst. 200. b.  
West. 2. c. 22.

*Rex, &c. Si A. fecerit, &c. tunc sum', &c. B. ostens. quare cum iidem A. & B. teneant boscum de J. in N. pro indiviso (c), præd' B. de eodem bosco fecit Vastum, &c. ad exhæredationem ipsius A. &c. Et habeas ibi, &c.* And this Writ lieth as well of Lands, Piscary, Turbary, and the like, as of Woods when they are holden in Common. See the Statute of West. 2. Cum duo vel tres, &c. Turbariam, cap. 22.

**E** (d) The Heir within Age shall have an Action of Waste against the Guardian in Socage. Supra. A. B.

The Heir at full Age shall have an Action of Waste against the King's Committee, &c.

**F** If two have a Reversion unto them, and unto the Heirs of one of them, they shall join in an Action of Waste against Tenant for Life. 22 H. 1. 25.  
Newton ac.

**G** (e) Guardian in Socage shall not punish Waste done by a Stranger. 28 H. 6.  
Waste 9.

(a) Waste

(a) How this may be presented in B. and answered at the King's Suit, and how the King's Grantee shall answer to the Heir in such Case, see 40 Aff. 22.

(b) See Rot. Parl. 8 E. 2. M. 9.

(c) And although they hold but for Life,

and by several Titles, yet Waste pro indiviso lies. 21 E. 3. 29.

(d) The Heir in this Case shall have Account or Trespass, but not Waste. See 46 E. 3. 17. 7 H. 6. 23. 17 E. 3. 7. 7 E. 3. 54. 2 H. 5. 7.

(e) See 46 E. 3. 17. Perk. 113. b. 4 E. 3. 16.

46 E. 3. 17. (a) Waste shall be brought against Tenant for Life, where there is H a Mesne Estate for Years between the Tenant for Life and him in the Reversion.

48 E. 3. 16. And it appeareth by the Register, that the Writ of Waste shall be  
50 E. 3. 4. maintainable, although the Mesne in the Remainder for Term of Life  
10 E. 4. 9. be between the Tenant for Life and him in the Reversion.  
Choke

contr. 42 E. (b) Where a Lease is made unto the Husband and Wife for Life or I  
3. 22. Belk. Years, there the Wife shall not be punished, after the Death of her Hus-  
2 H. 4. 3. band, for Waste done by the Husband. *M.* 3 *E.* 3.

Old Na. The Tenant may cut Trees to mend Houses, &c. and to do Repara- K  
Bre. 36. tions. But if Houses decay by the Default of the Tenant, (c) to cut  
4 E. 3. Trees to amend them is Waste.

Waste. 22  
contr. 7 H. Where Waste is done by the King's Enemies, or by Tempest, the L  
6. 33. ac. 40 Tenant shall not be punished for the same.

Aff. 22. Cutting of dead Wood is not Waste. And if a Man cut Wood to M  
20 E. 3. burn, where he hath sufficient Head-wood, it is Waste. 2 H. 6. 10.  
Waste 32.

2 H. 6. 11. Also it is not Waste to suffer Lands to lie fresh, and not to manure  
7 H. 6. 38. them, and to suffer them to grow full of Thorns, &c. (d) Also it is  
40 E. 3. 25. not Waste to fell seasonable Wood, which is used to be felled every  
twenty Years, or within that Time.

9 H. 6. 66. (e) If a Man fell Trees it is Waste; and if he suffer the Germins  
22 H. 6. 12. upon the Roots of the Trees to be again newly destroyed, the same is  
new Waste. (f)

20 H. 6. 1. And if a Man do not repair the Banks, by Reason whereof the Land N  
10 H. 7. 2. is drowned, the same is Waste.

con. And if a Man plough Meadow, &c. it is Waste. A Wall or Pale,  
25 H. 3. which is (g) covered with Thabe or Timber, may be Waste, if the Te-  
Waste 131. nant suffer them to be uncovered, by Reason whereof, &c. And  
20 H. 6. 1. the Digging of Gravel, or Stone, or Coals, shall be said Waste. (h)  
22 H. 6. 24.

16 H. 2. ac. Housebote, Haybote, and Firebote, do appertain unto a Termor of  
Common Right, and he may (i) take Wood for the same. *H.* 21  
*H.* 6.

A Bishop

(a) See *Bro. Wast* 56. *contra.* 48 E. 3.  
16. 50 E. 3. 4. 11 E. 3. 3, 9. *Perk.* 8. 7 *H.*  
6. 36. *Nota bene.*

(b) See the contrary, *Kelw.* 113. 19 E. 3.  
*Breve* 246. but 11 H. 4. 3. *per Cur.*, 19 H.  
6. 5. seem to accord.

(c) *Contra*, if Ruinous at the Time of  
the Lease made. *Dyer* 36. See 12 H. 8. 1.

(d) See 11 H. 6. 1. Oaks cannot be said  
seasonable Wood, which are passed the  
Age of 20 Years, but by a Custom in any  
Place, where is Plenty of Wood (Timber)  
Oaks under 20 Years may be seasonable  
Wood. And such Custom may be alledged  
in the Wood it self, without saying in  
 *tali Vill. or Hundred. talis habetur Consuet.*,  
&c. 4 H. 6. 1. *Rast. Entr.* 69. See 40 E.  
3. 25. 11 H. 6. 5.

(e) See Waste assigned in permitting of  
Wood to be uninclosed, whereby the Cattle  
eat the Germins. 11 H. 6. 1. 22 H. 6. 12.

(f) And treble Damages shall be reco-  
vered for both, yet he cannot recover *Lo-*  
*cum vastat.* 22 H. 6. 12.

(g) And it ought to be shewn *so covered*  
in the Assignment of the Waste. *Dyer* 108.  
22 H. 6. 24.

(h) See 5 Co. 12. a. 2 H. 4. 2. 1 H. 7.  
14. 12 H. 8. 1.

(i) *Viz.* Oaks, Elms, Ash, &c. for Re-  
pair of the House, and Under-wood, &c.  
for Inclosures and Firing; but *Note*; Oak,  
Elm, Ash, are not Under-wood. 21 H. 6.  
46. which ought to be shewn by the De-  
fendant in a Writ or Action of Waste.  
*Dyer* 19.

Sir



- O A Bishop, or a Master of an Hospital, or a Parson, shall not punish Waste done in the Time of their Predecessors. But an Abbot or Prior shall. See 57. E.
- P Tenant in Tail, after Possibility of Issue extinct, shall not be punished for Waste.
- A Cutting down Willows in the Sight of the Manor is adjudged Waste. [60.]  
P. 40. E. 3.
- B Lessee for Life, Remainder in Tail, the Remainder in Fee unto the Lessee for Life, if he do commit Waste, he shall be punished by him in the Remainder in Tail; and yet the Lessee for Life hath the Remainder in Fee, but there is a Mesn Estate of Inheritance, &c. 50 E. 3. 3.
- C (a) If a Man cut Trees of the Value of 3 s. 4d. it hath been adjudged Waste. 14 H. 4. 11. 38 E. 3. 7. Graunge to the Value of 40 s. wasted, and yet no Waste, say they.
- D If a Man maketh a Lease for one Year, or Half a Year, and the Tenant do Waste, the Lessor shall have Waste, and the Writ shall say, *Quas tenet ad Terminum Annorum*, and in the Count he shall shew the Special Matter. *Quare Litt.* 14.
- E (b) A Termor may cut the Under-wood, growing under the great Woods and tall Woods; but if there be not any tall Wood, then he cannot cut the Wood. P. 41 E. 3. 25. 42 E. 3. 6. 10 H. 7. 2.
- F And a Man may have Action of Waste, and Count upon divers Leases. M. 44 E. 3. 17. See 34 H. 8. 12.
- G (c) The Guardian shall not be punished for Waste done by a Stranger, &c. but a Termor shall, &c. 44 E. 3. 17.
- H (d) If Tenant in Tail leaseeth the Lands for his own Life, he shall have an Action of Waste against the Tenant, if Waste be done
- I (e) The Grantee by Fine of the Reversion shall not have a Writ of Waste against the Tenant, before the Tenant attorn: But if a Reversion escheat unto the Lord, he shall have Waste against the Tenant without Attornment. Lit. 131.
- And so if the King grant the Reversion by Letters Patent, the Grantee shall have Waste without Attornment. 34 H. 6. 51. 6 E. 3. 17. Attorn. 13.
- And so if a Man devise the Reversion unto another in Fee, upon Waste done, the Devisee shall have Waste without Attornment. 12 E. 4. 3.

T

(a) And

Sir W. W. The Cutting of Oaks of the Age of 7 Years is not Waste, by Brian. 13 H. 7. 21. But Newton, 22 H. 6. 47, said, the Termor cannot cut either Oaks or Ash for Fire-wood.

(a) That many petty Wastes are punishable together, see 14 H. 4. 11. 9 H. 6. 66. *infra* P.

(b) Waste in *decapitando* & *amputando*. 20 Fraxinos & 20 ulmos, and on a Demurrer adjudged for the Plaintiff. Dyer 65. a. But if the Assignment be in *succidendo* & *vendendo* 20 Oaks, &c. and the Defendant pleads

no Waste made, the Plaintiff cannot give in Evidence Lopping of Oaks. Dyer 92. a.

(c) But if the Lessee himself commits Waste, or commands another to do it, as to cut Trees, &c. the Lessee may plead this in Bar of Waste, but then the Lessee shall be barred of his Action of Trespass for ever. 5 H. 4. 2. b. 2 H. 7. 14. b.

(d) See 1 Inst. 345. Litt. 145. *contr. quare.* 2 H. 5. 7.

(e) See 34 H. 6. 6. 5 H. 7. 19. Nat. Br. 269.

10 H. 7. 5. (a) And none shall have an Action of Waste but he who hath an K Estate in Fee-simple, or in Fee-tail. But a Parson or Prebendary shall have a Writ of Waste upon their Lease, yet some say that they have not the Fee-simple in themselves alone.

45 E. 3. 9. (b) And if Tenant for Term of Life commit Waste, and afterwards L Thorp. ac. alieneth in Fee, yet the Writ of Waste lieth against him: Otherwise it is if the Waste be done after the Alienation made, as is said; *tamen quære*. 10 H. 7. 1. 25. E. 3. 36. 63.

3 H. 7. 11. If an Abbot committeth Waste in Lands which he hath in Ward, M and 5 H. 7. and dieth, the Successor shall not be charged. But if he be deposed, 24. for the the Successor shall be charged. M. 49 E. 3. See 43 E. 3. 8. reason of the Case.

21 H. 6. 3. A Writ of Waste shall be maintainable against one upon a Lease N 22 H. 6. 2. made unto him until he be promoted unto a Benefice, and the Writ shall suppose *quod tenet ad terminum vitæ*. And so of a Lease made to endure from such a Feast unto (c) such a Feast, the Writ shall suppose *quod tenet ad terminum annorum* in that Case, and by the Court the special Matter shall be shewed.

(d) Destruction of Villains by Tillage, adjudged Waste.

(e) Waste done by a Guardian unto the Value of 20*d.* was adjudged P Waste, and the Plaintiff recovered. H. 34 E. 3.

40 Aff. 22. The Termor is not bound for to repair the Houses which are ruinous Q Walte 24. by at the Time of the Lease made unto him. 49 E. 3. 2.

Knevit. A If two Coparceners lease Lands for Life, and Waste is committed, R House which and afterwards one of them dieth; the Aunt and the Niece ought to join in an Action of Waste for the Waste done before; and yet the built and Niece shall (f) not recover any Damages for the same, but the Place was abated wasted; and it seems they shall hold the same in Coparcenary. M. by the Guard- 11 E. 3. dian, and no Waste. But

if a Frame If there be two Coparceners, and one hath Issue, and dieth, and her Husband is Tenant by the Curtesy, and committeth Waste, his (g) Son shall not have an Action of Waste against him without naming the which was once covered in the Life of the Lessor, if the Lessee do erase it after his Death, the Heir shall have Waste. 45 E. 3. 3. 20. ante. 39. D.

other

(a) See Fitz. Waste 5. Lit. 145. Nat. Br. 36.

(b) But for Waste done before the Surrender (no) Action (of Waste) lies, *Quære*. 21 E. 4. 31. 8 H. 5. 8. 14 H. 14. a. 19 H. 6. 66. And the Writ in that Case shall be in the *Tenuit*, 14 H. 6. 14. as some held. But by others it shall be in the *Tenet*, whether he be Tenant for Life or Years; but if the Lessor enters with Tort on the Issue, the Action is suspended for Waste done before the Entry. 8 H. 6. 10. and he shall be summoned on the same Land. 21 H. 6. 57. a.

(c) See 14 H. 8. 11. Litt. 14. 7 H. 7. 2. 46 E. 3. 31.

(d) So if Villains by Reason thereof go out of or leave the Seignior, it is Exile, and punishable in Waste; *contra*, if only manumitted, *Et c.* 2 H. 6. 11. a. 14 H. 4. 11.

(e) See 12 H. 8. 1. 7 H. 6. 38. *supra* C.

(f) See 11 E. 2. Waste 115. 45 E. 3. 3. b. 11 H. 4. 16. b. 48 E. 3. 14 b. 35 H. 6. 23. b. *Kelw.* 105. a. Nat. Br. 101. 22 H. 6. 12. 49 E. 3. 2.

(g) See 9 H. 6. 11 b. *Dubitatur*, but *Kelw.* fol. 103. a. Case 64. that the Issue alone shall have it. 15 H. 7. 14.



other Coparcener : But if he bring such (a) Writ, it shall abate. *Quod vi. P. 2. H. 6. Title Waste.*

If there be Tenants in common *pro indiviso*, and one committeth Waste, the other two ought to join in an Action of Waste against the Third. See for that, *M. 3 E. 2. Waste.*

T If the Guardian commit Waste, and the Heir being within Age, bringeth an Action of Waste, the Guardian thereby shall lose the Wardship, and Damages for so much as is wasted, besides the Value of the Wardship which is lost ; but if the Heir (b) at full Age do bring a Writ of Waste against him who was Guardian, and recover, then he shall recover treble Damages against the Guardian, because the same is out of the Statute of *Gloucester*, which saith, that the Guardian shall lose the Wardship ; for he cannot lose the Wardship there ; and therefore he is not in that Case as Tenant in Dower or by the Curtesy are, who were punishable in Waste by the Common Law, *Quod vi. M. 12 H. 4. 3. in the Title of Waste, the Opinion of Thirning.*

### (c) Writ of Estrepment.

U THERE are two Manner of Writs of Estrepment. One is when a Man hath a real Action depending, as a *Formedon*, or a *Dum fuit infra ætatem*, or a (d) Writ of Right, or (d) such Action wherein the Demandant shall not recover Damages ; then he may sue this Writ of Estrepment against the Tenant, inhibiting him that he do not make Waste, nor Strip, pendant the Action : And this is properly before Judgment is given for the Demandant.

And another Writ of Estrepment lieth for the Demandant, where he hath Judgment (e) to recover Seisin of Land, and before Execution

H. 6. 16. No Age in this Writ, for it is in Nature of Trespass, and no Process of Utlawry, for that it is a Preeyre. 14 H. 7. 10. If the Defendant plead in Arrest of Judgment, or Release be pleaded after Verdict, or if the Justices take Advice of their Judgment, the Party may have Estrepment, by *Read*, 2 H. 6. 13. 4 El. Dyer 210.

T 2

sued

(a) See 9 H. 6. 11. 50 E. 3. 3. *ante.* 39. D.

(b) Note ; One shall not recover Costs on the Statute of *Gloucester*. 30 E. 3. 27 b. 2 H. 4. 17. b. 12 H. 4. 4. 5 H. 5. 13. a. 9 H. 6. 66. b. 14 H. 6. 13. a. *contr.* 5 E. 4. 7. a. See *Kelw.* 26. the Stat. 289.

(c) See *Rot. Parliament.* 28 E. 3. N. 19. A Petition that this Writ may lie in every Action where the Party is to recover Damages. *Resp. Lex antiqua Servira.*

(d) See 14 H. 7. 7. a. b. and Dyer 210. b. In a *Quid Furis clamat*, pending the Writ, and also between the Judgment and Exe-

cution, in Dyer, *Catesby's Case*, *Dubitatur* in a Writ of Dower, where the Husband did not die seized. *Tr. 6 Eliz. Mo. 69.*

(e) See 21 E. 51. b. The Demandant had Judgment in a *Sive facias* on a Fine against B. and sues an Estrepment, and found Pledges to pursue as he ought against B. and C. and others, of an Estrepment made between Judgment and Execution ; all Demand and had Oyer of the Record, and demand Judgment, seeing they were not Parties to the Record, and C. pleads that B. was his Tenant for Life, and concludes to the Inquest ; whereas he might

sued by *Habere facias seisinam*, he may sue this Writ, that the Tenant X do not Waste or Strip: And this Writ doth recite the Recovery and the Judgment, &c. And also the Demandant may have a Writ of Estrepment directed to the Sheriff, commanding him that he do not suffer the Tenant to do Waste or Strip.

14 H. 7. 7.  
Nat. Br. 40.  
[61.]

And some say that this Writ of Estrepment doth not lie in such Y Action where the Demandant shall recover Damages against the Tenant. But it seemeth reasonable that the Demandant have such Writ where he doth recover Damages as where not: For it may be that the Tenant is not of Ability to satisfy the Demandant for his Damages. And also if the Tenant shall be suffered to let the Houses to fall to Decay, or to pull them down, and to destroy the Parks and Chases, it should be very inconvenient.

28 H. 6. 8.  
qu. 22 E. 3.  
2. Estrep-  
ment 9. E-  
streptment  
brought a-  
gainst the  
Defendant,  
and a  
Stranger to  
to the Reco-  
very.

And in every real Action the Demandant may have a Writ unto the A Sheriff, commanding him, that he see that the Statute which ordaineth the Estrepment be observed; and that he do not suffer the Tenant to do such Strip: And by the like Reason he may have the Writ against the Tenant, where he may receive Damages, &c.

(a) And if the Tenant do make a Feoffment hanging the Plea, the B Demandant may have a Writ of Estrepment against the Tenant and against his Feoffee, &c. And by the same Reason it seemeth that he may have a Writ of Estrepment against the Tenant and those who are his Servants, naming their Names, &c. (b) although they have nothing in the Tenancy. *Quære tamen. Vid. T. 5 E. 2 Tit. Estrepment.*

6 H. 4. 2.  
34 E. 3. E-  
streptment 15.  
15 Eliz.  
Dyer 325.

In an Assize, and in every real Action, where the Demandant shall C recover Damages, he may have a Writ of Estrepment for Strip made after the Judgment, and before Execution: But for Corn cut and carried away after Judgment, and before Execution sued forth by the Demandant, the Demandant shall not have a Writ of Estrepment. *Quære* what Remedy he shall have: It seemeth none; for the Tenant may take the Profits of the Lands before Execution, as I think, for it shall not be said Estrepment, if not that the Tenant do such a Thing which shall be said Waste if a Termor had done it.

18 H. 8. 5.  
Note; A Man  
cannot have  
this Writ be-  
tween the  
Award of the

And when a Man purchaseth his original Writ directed to the Sheriff, D then may be purchased his Writ of Estrepment against the Tenant, if he will; or a Writ unto the Sheriff, commanding him to see that the Statute which ordaineth the Estrepment be observed. Writ and the Return; for the Statute giveth it pendent the Writ, and it is not pendent till returned. See 12 R. 2. Estrepment 6. by *Charlton*, he shall not recover Damages for Waste before the Judgment against the Tenant of the Land.

And

might have pleaded in Bar, that he was not comprised, and was amerced for his feint Plea, &c. Note; The Plaintiff did not dare to demur, but tendred an Issue, viz. comprised, and the others *contra*. 22 E. 3. 2.

So Note; The Record may be falsified in this Writ. Note; There shall no Judg-

ment be given in Estrepment, till the special Plea determined. 3 H. 6. Judgment 4. See Judgment therein for Damages. *Plaf. 19 Eliz. Rot. 841. Bendl. 220.*

(a) See *infra*. H. 22 E. 3. 2. 3.

(b) And this was so at Common Law. 22 E. 3. 3.



- E** And if a Man sueth a Writ of Right unto the Lord of a Court-Baron, there he may sue a Writ out of the Chancery, directed to the Sheriff, that he see that Waste be not done, &c. or he may sue a Writ out of the Chancery, directed to the Party himself, commanding him that he shall not do Waste, &c. and an Attachment thereupon. And when the Writ is depending in the Common Pleas, then the Demandant shall have the Writ of Estreptment out of the Common Pleas, or out of the (a) Chancery, at his Election.
- F** And the Writ may be directed unto the Sheriff and the Party; or 3 H. 6. 13. he may have several Writs, one to the Sheriff, and the other to the Party.
- G** And hanging the Action the Tenant may do Waste, and shall not be punished, because it is before the Prohibition delivered unto him; but only for that Waste done after the (b) Prohibition delivered. 3 H. 6. 16. 12 R. 2. Br. Estreptment 13. they were at issue, if it were before the Delivery, or after. 33 H. 6. 6. 14 H. 7. 7. 2 H. 6. 13.
- H** (c) And if a Stranger of his own Wrong do Waste after the Prohibition delivered unto the Tenant, and against the Tenant's Will, then the Tenant shall not be punished for that Waste, &c.
- I** In a *Scire facias* to execute a Fine, if the Tenant do commit Waste, the Demandant may sue a Writ of Estreptment, &c.
- K** In an Assise, the Tenant did (d) Waste after Verdict, and before Judgment given, and afterwards the Plaintiff had Judgment, and afterwards sued a Writ of Estreptment against the Tenant for the Waste done by him after the Verdict, and before Judgment; and it was awarded, that the Writ was well brought. H. 21 E. 3.
- L** And a Writ of Estreptment against the Tenant for Waste done after the Judgment, and before Execution, was maintainable at the Common Law before the Statute. 33 H. 6. 6. cont. by some.
- M** And if a *Formedon* be brought of a Manor, and after the Estreptment is brought against the Tenant, and afterwards a Tenancy doth escheat unto the Manor, and the Tenant doth commit Waste in that Manor, he shall be punished for the same, and yet it is not demanded by the Writ, but Sureties were demanded by the Writ in the Name of the Manor, and the Land cometh in lieu of the Services, &c. 15 Eliz. Dyer 325. ac. 4 E. 3. 32 Br. Estreptment 12.

If

(a) 2 H. 6. 13. a. 33 H. 6. 86. a. cont. 33 E. 3. Brief 917.

(b) But the Defendant shall not be imprisoned for a Waste done after, except the Writ was directed to him; adjudged in a Case between the Earl of Cumberland, and the Countess Dowager. 16 Jac. 1.

(c) In an Estreptment against an Infant, who is in by Discent, he shall not have his Age by Award, because he has to answer for the Contempt. 2dly. For Waste done after the Prohibition by his Guardian in Sorage, without his Command, he shall not be punished, for the Prohibition extends only to Waste done by himself; yet a Tenant for Life shall be charged in a Writ of Waste, for a Waste done by a Stranger. 3 H. 6. 17. See 28 H. 6. 8.

(d) See it adjudged, that he shall have a Writ of Estreptment in such Case. 21 E. 3. 51 b. 14 H. 7. 7. a. b. Yet 'tis held, he may have a Writ to the Sheriff to enquire of the Damages for the Waste done between the Verdict and Judgment, and upon the Inquest, the other shall be put to answer the Damages. 21 E. 3. 3. a. 21 E. 3. 51. Note; The Writ which was prayed was a *Venire facias* to answer to the Estreptment, and it was granted; so that it seems no Prohibition preceded. See 14 H. 7. 7. for a *Scire facias* before a Writ of Estreptment granted, but if the Tenant does Waste after a View, and before Judgment, a *Scire facias* lies on a Surmise thereof, or a Writ of Estreptment. 6 H. 4. 1. b. See the Register 77 b. among the Notes.

14 H. 7. 10.  
Cutler and  
Kebble.

If a Man do recover in a Writ of Waste, he shall have a Writ of N Estrepment against the Defendant for Waste done after the Judgment, and before the Execution. 7 H. 4. 16.

21 E. 3. 3.  
Br. Estrep-  
ment 7.

In Attaint in the Common Pleas, the Plaintiff shall have the Writ O of Estrepment against the Defendant out of the Common Pleas, if he will, or out of the Chancery. 2 H. 6. 13.

Quere, if  
Justices of  
Assise may  
award this  
Writ. 34 E.  
3. Estrep-  
ment 14. 5

If a Man sue a *Juris utrum* against several Tenants, as he may, or a P *Scire facias* against several Tenants, there he may have an Estrepment against any of the Tenants, and not against them all. And so it seemeth if a *Formedon* be brought against two Tenants jointly, the Demandant may have an Estrepment against one Tenant only.

E. 2. Estrepment 11. Joint-tenancy at the Original is a good Plea; otherwise to say, that he was Joint-tenant at the Time of the Judgment given.

And in a *Juris utrum* sued in London, a Man shall have a Writ of Q *Estrepment* directed to the Sheriff of London, as appeareth by the Register.

## Writ de Partitione facienda.

THE Writ de Partitione facienda is such: (a)

Rex, &c. Si A. fecerit, &c. sum' B. &c. ostens. quare quum eadem R A. & B. insimul & pro indiviso teneant tres acras terræ cum pertin' de hæreditate quæ fuit M. matris prædict' A. & B. cujus hæred' ipsæ sunt, in I. eidem B. Partitioni nostræ inde inter eas secundum Legem & consuetudinem regni Angl' faciend' contradic', & eam facere non permittit, minus juste, ut dicit', & habeas ibi Sum', & hoc Breve.

9 H. 5. 15.  
Quere if Par-  
ceners of  
Lands in  
Tail shall  
have a Writ  
of Partition.

And if the Husband hath one Part of the Land by Purchase, and S the other Parcel in the Right of his Wife, and another Coparcener hath another Part as one of the Heirs of the common Ancestor; then the Husband and the Wife shall have a Writ of Partition against the three Coparceners, and the Writ shall be such:

[ 62.]

Rex Vic', &c. Si I. & M. uxor ejus fecer', &c. sum' M. &c. ostens. quare cum idem I. ut in jure ipsius M. de purparte ipsorum de Manerio de T. quod fuit A. patris prædict' M. cujus una hæred' ipsa est, contingent' idemque I. virtute Ecossamenti sibi per F. filiam & alteram hæredem prædict' A. de purparte ipsius F. de eodem Manerio contingent' facti, ac præf. M. filia & tertia hæ. ejusdem A. insimul & pro indiviso teneant Manerium præd' cum pertin', eadem M. Partitione inde, &c.

And

(a) If he counts of an Estate-Tail in the Writ the Land is not in Demand, but only Ancestor, 'tis sufficient without shewing the Possession affirmed (or ascertained). the Commencement thereof, for in this Dyer 79.b.



**A** And there is a Rule in the Register such, that is to say, that *Anno* 34 E. 3. 12. at *Tork*, was sealed a *Writ de Partitione facienda* betwixt Strangers; *Partition* 14. and there it was said, that a Man should have the same in every Case without *de hæreditate* in the Writ: And it's there said, that that Writ was never seen before.

**B** And if a Man will sue a Writ of Partition for Lands in *London*, then he shall have a Writ unto the Mayor and Sheriffs of *London* in the Nature of an *Audita querela*, and the Writ shall be such:

*Rex Majori & Vic' Lond' salut'. Ex parte S. de H. & I. uxor' ejus nobis est ostens. quod cum ipsi R. & S. infimul & pro indiviso teneant unum mesuag' cum pertin' in Lond' idem R. & S. Partitioni inde secundum Legem & consuet' ejusdem Civitat' faciend' contradic', & eam fieri non permitt', in ipsorum S. & I. dampnum non modicum & gravamen, & contra Consuetud' in Civitate illa hætenus obtentam & approbatam: Vobis igitur præcip', quod audita ipsorum S. & I. in hæc parte querel', & vocatis coram vobis R. & S. auditisque hinc inde partium rationibus, iisdem S. & I. in præmissis ulterius fieri faciatis quod de jure & secundum Consuetudinem Civitatis prædictæ fuerit faciend', ut hætenus in casu consimili fieri consuevit. Teste, &c.*

**C** And by that it appeareth that by the Custom of *London* one Joint-tenant, or Tenant in common, shall have a Writ of Partition against his Companion.

And Partition may be made in the Chancery, where one of the Co- 38 H. 6. 9. parceners is in Ward to the King.

**D** And Partition may be made of an Advowson or of a Reversion, that one shall have the Reversion of such Acres, and another shall have the Reversion of other Acres; and such Partition may be without Deed. 6 E. 3. 47. 11 H. 4. 61. 28 H. 6. 2. 9 Aff. 23. 3 E. 4. 9. 49. 45 E. 3. Partition 7.

**E** And it appeareth in 3 E. 4. that Tenants in common may make Partition by Deed.

**F** And Partitions betwixt Husbands and Wives shall bind the Wives, if they be equal. And by Partition made of a Manner without speaking of the Advowson, the Advowson doth remain in common. And Joint-tenants do make Partition of a Mill without Deed, and adjudged good. *Trin.* 47 E. 3. 5 H. 7. 22. 7. *Aff.* 19. 45 E. 3. 12. 9 H. 6. 5. 7. 19 H. 6. 25. 2 H. 7. 5. ac. 47 E. 3. 24. 3 E. 4. 9. 19 H. 6. 25.

**G** (a) If one Coparcener doth lease her Part unto another Coparcener for Years, yet she shall have a Writ of Partition against her Sister during the Term of Years. 22 E. 3. 57. (17.) *Dyer* 52. that they cannot. 21 E. 3. Partition 9.

**H** After Partition in the Chancery, she which is within Age, after she cometh of full Age, if she have too little, shall have a Writ *de Partitione facienda* *Thorpe.* 21 E. 3. 31. Partition 10.

(a) See 21 E. 3. 57. a. b. In a *Partic' faciend'*, by A. against B. who pleads, that the Plaintiff had leased to him his Part for five Years, and that, saving to him his said Term, he is ready to make Partition, and always has so been, and his Protest was entered on the Roll. *Skipw.* to have Damages, Replied, that he had not been always ready, *Et non allocatur.* For

altho' he Counts *ad Damnum*, yet no Damages shall be recovered, and therefore a Partition was awarded with a Saving of the Term, and by *Candish* the like Law is in a *Nuper obiit*, Account, *Perambulatione facienda.* But by *Strange* and *Martyn*, the Plaintiff shall recover Damages. 7 H. 6. 35. b.

The Remedy is only by *Scire facias*.

*facienda* against her Sister ; or a *Scire facias*, upon the Record of the Partition in the Chancery, against her Coparcener, which shall be returned into the Chancery, &c. to shew wherefore new Partition or Extent shall not be made, &c.

10 E. 1. Partition 21.  
Co. Lit. 4.  
Hil. 34 E.  
Welden and Bridgwater's Case ac.  
Co. Lit. 4. a.

And Partition betwixt Coparceners, that one shall have the Occupation of the Land from *Easter* until *August*, solely and in Severalty to herself, and then that the others shall occupy the Lands solely and severally from *August* to *Easter*, yearly to them and their Heirs, is adjudged a good Partition in the Time of King E. 1. Co. Lit. 167. b.

And by the same Reason it seemeth a good Partition, if two Coparceners have two Manors by Descent, and they make a Partition, that one shall occupy one Manor one Year, and the other the other Manor for that Year, and then that he who occupied one Manor one Year, should occupy the other Manor for the Year following ; and so they and their Heirs shall change every Year, and occupy the Manor which the other Coparcener did occupy the Year before.

And also Coparceners may make Partition for Term of Life, or for Years. 20 H. 6. 13. Lit 57.

V. 57. Lit.  
ac. 20 H. 6.  
24.

And also Partition, that one shall have the Land which is entailed, and the other the Fee-simple Land, is a good Partition ; and the Process in this Writ is *Sum*, *Attachment*, and *Disfrefs* infinite. (a)

### (b) Writ de Excommunicato capiendo.

20 H. 6. 1.  
Not good by his ordinary Seal. 8 H. 6. 3. The Archdeacon doth certify, and it is said that he was Ordinary immediate, and yet it is doubted whether good or no, because the King cannot have Benefit to seize Temporalities, for that he hath not Temporalities as a Bishop hath.

**B**EFORE this Writ shall be granted, the Contumacy and Contempt made by the Party unto Holy Church ought to be certified into the Chancery by the Bishop, by Letters under his Seal. But this Certificate by Letters may be made into the Chancery by a Bishop elect, before he be consecrated : And also the same may be certified by Letters of the Chancellor or Vicar-General, when the Bishop is beyond the Seas, or out of his Diocese, *in remotis agend*, &c. And although that the Bishop be in his Diocese, yet the Certificate of the Vicar-General by his Letters unto the Chancery, reciting that the Bishop is *in remotis agend*, is good, and shall not be traversed. And in Time of Vacation of the Bishoprick, the Certificate ought to be made by the Guardians of the Spiritualities for the Time being, or by the Archbishop, &c. if he be Guardian of the Spiritualities.

And upon this Writ he shall have an *Alias* and a *Pluries*, and if they are not answered, an Attachment against the Sheriff, directed unto the Coroners, returnable in the King's Bench.

And

(a) If there be Lord, three Coparceners Mesne, and a Tenant (of the Mesnalty,) and one of the Coparceners purchases the Tenancy, this is not only a Partition of the Mesnalty being thereby extinguished for a third Part, but 'tis also

a Division of the Seigniorie paramount ; for now the Lord must make several Avowries. See 36 H. 6. 7. Co. Lit. 167. b.

(b) Pasf. 24. Car. 2. B. R. (L. R. 130.) Note ; By Hale, the Sheriff cannot break the House on an *Excom* Capiend.



**A** And if the Excommunicate hath made Satisfaction unto the Church for his Contumacy and Contempt, &c. then the Bishop or Vicar-General, or the Guardian of the Spiritualties, &c. as before is said, ought to certify the King in the Chancery, that the Party hath made Satisfaction unto the Church for the Contempt, &c. and thereupon he shall have such Writ to the Sheriff, viz. (a)

*Rex Vic' Linc' salut'. Cum S. & I. quos ad denunciationes Decani & Capituli Ecclesiæ beati Petri Ebor' sede vacante, or thus, ad denunciationem vener' Patris A. Winton' Episcopi, tanquam excommunicatos, & claves contempnentes, per corpora sua, secundum Consuetud'. And, per te iusticiari præceperimus, donec sanctæ Ecclesiæ tam de contemptu quam de injur' ei illata ab eis fuerit satisfact' ; jamque ex ipsis Decan' & Capitulo, or thus, ab ipso Episcopo Absolution' beneficium in form' meruerunt obtiner', sicut iidem Decanus & Capitul', or thus, sicut idem Episc' per Literas suas patentes nobis significaver', vel significavit : Tibi præcipimus, quod ipsos S. & I. a prisona qua detinent' si ea occasione, & non alia, detinent' in eadem, sine dilatione deliberari facias, &c.*

**B** And if the Sheriff will not execute that Writ, he shall have an *Alias* and a *Pluries*, and Attachment against the Sheriff, directed unto the Coroners, returnable into the King's Bench.

**C** And if the Party excommunicated, who is so taken and in Prison, offer sufficient Caution or Surety, to abide the Ordinances and Rules of the Holy Church, and the Judges there and the Ordinary do refuse for to take such Caution or Surety, then he may have another Writ unto the Bishop to admit of his Caution, and the Writ is such :

*(b) Writ de Cautione admittenda.*

**R**EX venerabili, &c. Ex parte A. Cum ad denunciationem vestram tanquam excommunicatum & claves Ecclesiæ contempnen', per corpus suum, secundum Consuetudinem Ang', per Vic' nostrum Lincoln', &c. Iusticiari præceperimus, donec sanct' Ecclesiæ, &c. esset satisfactum ; Nobis est ostensum, quod licet idem A. vobis frequent' obtulerit idoneam Cautionem de parend' mandatis Ecclesiæ in forma juris, ut per hoc Absolutionis beneficium consequi posset, vos nihilominus Cautionem hujusmodi ab eo admittere hætenus recusastis, de quo miramur : Et quia nolumus quod idem A. diutius in prisona contra iustitiam detineatur, Vobis mandamus, quod, accepta

U

a præ-

(a) See *Lib. Parl.* 25 E. 3. N. 31. A Petition, that no *Ex onmunicato cap'*, shall Issue before a *Sire facias* against the Party, to know whether the Case be Lay, that so the Party may reverse it if the Matter be Lay, or shew the Matter where the *Ex om. cap'* is pleaded against him : But it seems the Keepers of the Kings Con-

science at that Time were such, that both were there denied. Tho' it is hoped Mankind will at length have their Eyes opened to see the Mischiefs occasioned by this Writ. *W. Bobun.*

(b) See *Bacon of Government* 113. touching this Writ.

a prefato A. Cautione predicta, ipsum A. a (a) prisona qua occasione premissa detinetur deliberari mandetis, alioquin quod nostrum est in hac parte exequemur, &c.

And if the Bishop will not send unto the Sheriff to deliver the Person so excommunicated, then he shall have such a Writ out of the Chancery for to deliver him.

Rex Vic', &c. Ex parte A. qui ad denunciationem venerabil', &c. and rehearse the Writ sent before unto the Bishop for Deliverance of the Prisoner, &c. Et quia volumus quod idem A. diutius in prisona contr. justitiam detineatur; Tibi precipimus, quod in propria person' tua accedas ad prefat' Episc', & ex parte nostra moneas & efficaciter indices, ut, accepta ab eodem A. Cautione predicta, ipsum A. a prisona predicta mandet deliberari. Et si idem Episcopus vel Custos in presentia tua id facere noluerit, tunc ipsum A. a prisona predicta, si ea occasione, & non alia detineatur in eadem, deliberari fac'. Teste, &c.

And upon this Writ he shall have an Alias and a Pluries unto the Sheriff; and if he do not serve the Writs, he shall have Attachment against the Sheriff, but so shall he not have against the Bishop, &c.

And if the Bishop do certify by his Letters into the Chancery, that he hath sent unto his Official or Archdeacon to absolve the Party Excommunicate, then the Party shall have a Writ unto the Sheriff rehearsing these Letters, &c. Vobis precipimus, quod predict' A. cum vob' constare poterit ipsum ab Excommunicatione sua predict' per predict' Offic' vel Archidiacon' absolvi a prisona qua detinetur, si ea occasione, & non alia, detineatur in eadem, sine dilatione deliberari fac', &c. Teste, &c.

And upon that Writ he shall have an Alias, Pluries, and Attachment against the Sheriff, if he do not serve the Writ.

And yet it seems that the Official or Archdeacon to whom the Bishop hath sent his Letters to absolve the Party is not bound to certify the Sheriff that he hath such Letters; but the Sheriff ought to go or send to them to know the Truth thereof, and thereupon to deliver the Party: And the Bishop, or he who excommunicated him, and upon whose Certificate the Party was taken, may command the Sheriff to deliver him, as it appeareth by the Writs in the Register.

And if a Man be excommunicated, and taken by a Significavit, and after offers Caution unto the Bishop to obey the Church, and the Bishop do refuse, for which he sueth a Writ to the Sheriff, to go unto the Bishop, and to warn him to take Caution, &c. now if the Bishop think in his Conscience, or standeth in Doubt whether the Sheriff will deliver him by that Writ, the Bishop may purchase another Writ directed to the Sheriff reciting the Case, and in the End thereof, Tibi precipimus, quod ipsum A. a prisona predicta, nisi in presentia tua cautionem pignorat' ad minus eidem Episc' de satisfaciend' obtulerit, nullatenus deliberes absque mandato nostro, seu ipsius Episcopi, in hac parte speciali. Teste, &c.

[64.]

And

(a) See Rot. Claus. 7 H. 3. (5.) M. 2. tunc, &c. infra Ea lesam absolvere vetitis. Quare the Canons Temp. H. 1.



- A And if the Bishop do take Caution of the Party to obey Holy Church, then the Bishop may certify the same into the Chancery, and thereupon the Party shall have a Writ unto the Sheriff for to deliver him.
- B And if the Sheriff do deliver such Persons excommunicate without Order of Law, then upon Complaint of the Bishop into the Chancery, he shall have a new Writ unto the new Sheriff rehearsing the Matter, commanding him to take the said Person, and to detain him in Prison; and also in the same Writ he shall command the Sheriff, to make the old Sheriff to answer the King in his Bench for the Contempt: And if the Sheriff who setteth the Party at large be yet Sheriff, then it seemeth the Writ shall be awarded unto the Coroners to apprehend the Party excommunicated, and to cause the Sheriff to appear, &c. as before is said. Register 67.  
1 Lutw. 123.
- C And if a Man be excommunicated before the Chancellor of Oxford, &c. and the Chancellor doth certify this Excommunication into the Chancery, &c. upon the same Certificate the King shall award a *Significavit* unto the Sheriff, to apprehend the Party; and the Writ shall be such: *Quum nos de gratia nostra speciali concesserimus, (a) quod Cancellar. Universitat' Oxon', qui pro tempore fuerit, per Literas suas patentes Cancell' nostro Angl' pro tempore existent' significare possit & certificare de nominibus singulorum de jurisdictione pref' Cancellar' Oxon' qui majoris Excommunicationis vinculo fuerint innodati, & quod dict' Cancell' nostro, qui pro tempore fuerit, Brevia nostra fieri & sub magno Sigillo nostro consignari fac' pro captione eorum qui sic per dictum Cancell' Oxon' fuer' excommunicati, & per quadraginta dies (b) perseveraver' in ead' ad signif. sive certif. ipsius Cancell' Oxon' supradict', prout in Liter' nostr' patent' inde confectis plenius inde continet'; ac Johan' F. Cancell' Universitatis præd', &c. per Literas suas, &c. quod W. de B. &c. suæ jurisdictionis propter suam, &c. as in the Writ. And Quære if the University of Cambridge have such Privilege; it seemeth they have.*
- D If a Man be sued in the Spiritual Court, and he purchase a Prohibition and deliver the same, and notwithstanding they proceed, for which Cause the Defendant sueth an Attachment upon the same Prohibition, and pendant the Attachment, the Defendant in the Spiritual Court is excommunicated, and the same certified into the Chancery, by reason whereof a *Significavit* is awarded unto the Sheriff against the Defendant for to take him: Now the Defendant may come into the Chancery, and shew how that he had a Prohibition, and an Attachment thereupon against the Party, and that pendant the Attachment he is excommunicated, and the *Significavit* awarded to take him. (c) Now upon that he shall have a *Superfedeas* directed unto the same Sheriff, reciting all the 2 H. 4. 3.

U 2

Matter,

(a) *Vide Lib. Parl. E. 1. 194 Rot. pat. 9 E. 3. Pars 1. M. 10. Pat. 12 E. 3. Pars 2. M. 8. Pat. 14. E. 1. Pars 1. M. 47. Pat. 21 E. 3. Pars 3. M. 22. Pat. 26 E. 3. Pars 1. M. 24.*

(b) See 20 H. 6. 25. That within the

forty Days there might be an Appeal to the Court of Rome.

(c) See the like Writ, *Rot. Claus. 7 H. 3. M. 6. Quia constat nobis in Mandatorio nostro nos fuisse Circumventos.*

Matter, commanding him not to take him; and if he do take him for the Occasion afore said, that he deliver him *donec Placitum dicti Attachia-ment' fuerit discuss'* &c. And this Writ shall issue out of the Chancery, (a) if the Attachment be not returned into the King's Bench. But if the Attachment be returned into the King's Bench, then he shall have this Writ of *Supersedeas* out of the King's Bench, or out of the Chancery, at his Pleasure. And it ought to appear by the Certificate of the Bishop that he hath been excommunicated by the Space of forty Days, before the *Significavit* shall be awarded.

And if a Man be sued in the Spiritual Court, or the Bishop sue or E cite him *Ex officio*, and excommunicate him, and certify the same into the Chancery, and upon the same a *Significavit* is awarded unto the Sheriff for to apprehend him, &c. and afterwards the Official by Letters certify into the Chancery, that he hath appealed from that Sentence unto the Court of Rome, or unto the Court of Canterbury, &c. then upon that Certificate he shall have a Writ of *Supersedeas* directed unto the Sheriff, reciting that he hath appealed, commanding him not to apprehend him *pendente Appellationis negotio supradict'*; or thus, To surcease, *donec de Consilio nostro aliud inde duxerimus ordinand'*, *vel usque talem diem*; or thus, To surcease, &c. and he hath apprehended him *ea occasione, tunc ipsum a prisona præd' qua, &c. deliberari faciat, &c.*

And after the *Significavit* awarded against the Party, if he bring the Pope's (b) Bulls into the Chancery, testifying that he hath appealed from that Sentence, &c. he shall thereupon have a *Supersedeas* unto the Sheriff; and in the *Supersedeas* it behoveth not to make Mention of the Pope's Bulls, but to say, *quod sicut per instrumenta publica, &c.* And he ought to prove his Diligence in suing his Appeal by Witnesses, or by Oath, and within the Year of the Time of his Appeal sued. And the Rule in the Register is, Writs of *Supersedeas* (*hanging Appeals*) ought not to be; if it do not appear upon Record in the Chancery that the *Significavit* is granted and passed, &c.

And this Writ of *Significavit* doth not lie but where a Man is ex- F communicated by a Special Name, and in a Special Suit against him by the Ordinary *Ex officio*, or by the Party; for that is called *Sententia majoris Excommunicationis*, and upon Certificate thereof in the Chancery doth the Writ lie. But where he is not especially excommunicated,

(a) But yet by *Morris and Thorp*, in the like Case, they would not grant a *Supersedeas* out of Chancery, while the Common Pleas, where the Attachment is returnable, is open. 38 E. 3. 14.

(b) So that an Appeal to Rome was sufficient for a *Supersedeas*. 20 H. 6. 26. Yet a Repeal of an Excommenagement made by Judges delegated by the Pope was not sufficient to make one responsible against a Certificate of Excommunication by the Archbishop. 16 E. 3. Excom' 4. And

Note well. 14 H. 4. 14. where on a Sentence given at the Court of Rome, a Delegation was made to the Archbishop of Canterbury, to execute the Excommenagement, yet the Parry was still responsible, for that the Archbishop did this not as Archbishop or Judge, but only as an Officer, and therefore he cannot absolve him till Agreement made with the Party. See *Rot. Parliament.* 8 E. 2. M. 7. *Petitio abbatis de Rufford.*



ted, &c. (a) although that the Bishop certify that he is excommunicated in *Sententia Excommunicationis*, upon that this Writ of *Significavit* doth not lie, for they ought to exprefs the Cause, and sue against him fpecially in the Certificate.

Upon an Excommengment certified by the Pope's Bulls, a *Significavit* shall not be granted.

If a Bishop certify an Excommengment into the Chancery, made in Time of his Predecessor, and the Contumacy, &c. he shall have a *Significavit* thereupon: But upon the Certificate of the Commissary (b), or Official, of an Excommengment in the Chancery, and of the Contumacy a *Significavit* shall not be granted; nor upon the Certificate of an Abbot, who hath ordinary Jurisdiction, of an Excommengment in Chancery, a *Significavit* shall not be granted.

A If a Bishop certify in Chancery, that another Bishop hath certified him that the Party is Excommunicate in his Diocese, and so hath remained by the Space of forty Days; the same Certificate is void, and a *Significavit* shall not be granted thereupon.

B If a Man be excommenged in the Spiritual Court, and the Bishop certify the same in the Chancery, and hath a Writ of *Significavit* directed unto the Sheriff to apprehend the Party, and the Defendant do appeal unto the Court of Rome, and hath Bulls and Instruments exhibited into the Chancery to prove the same; then upon these Bulls, &c. shewed in Chancery, he shall have a special *Scire facias*, rehearsing all the Matter directed unto the Sheriff, to warn the Party at whose Suit he was excommunicated to appear in the Chancery at a certain Day, to shew Cause why he ought not to surcease to apprehend the Party so excommunicated depending the same Appeal; and also commanding the Sheriff to take sufficient Sureties, who will answer Body for Body, for him who is so excommunicated, to pursue, &c. and to do unto the Party as the Court shall award, and that then he do surcease to apprehend him. And if the Sheriff return the Writ of *Scire facias*, that he hath warned the Party, and hath sent that Writ unto the Bailiff of the Liberty, who had given him Answer, that he had warned the Party at whose Suit he was so excommunicated, to appear in the Chancery at the

(a) *Nota; Excommunicatio aut fertur a iure, & tunc est poena delicti, vel ab homine & tunc est poena Contumacia in non veniendo vel parendo, utraq; autem vel Major quia privat a Receptione Sacramentorum & ab hominum consortio qualis est hodie in usu, and is commonly called at this Day, Excommunicatio vel minor quae excludit a Preceptis Sacramentorum est; lata vel a lege ut per Excommunicationem Excommunicato, vel ab homine licet raro. Lib. de rubric. de Sententia Excom. Note; In certifying an Excommengment, the Cause must be expreffed, and if not sufficient, the Party shall have a Writ out of Chancery to asswoyl him. 14 H. 4. 14. It seems the Cause need not be certified, but where*

a Prohibition is brought against the Bishop; but on a general Certificate, it shall be intended to be for the same Cause as is in the Prohibition. 28 E. 3. 97. a. 22 E. 4. 20. a. 20 E. 3. Excom. 9. 15 H. 7. 16. See 3 H. 4. 3 b.

(b) See 11 H. 4. 64. a. by Hankf. at the ancient Common Law, a Commissary might certify Excommunication, but he was restrained by Parliament.

And note the Cause why none inferior to a Bishop can invoke the Aid of the temporal Arm. *Lindw. De Senten. Excom. cap. Praterea, &c.* See 11 H. 4. 64. 7 E. 4. 14. but otherwise of committing of Administrations or Probate of Wills.

[ 65. ]  
12 E. 4. 15.  
16.  
14 H. 4. 14.  
8 H. 6. 3.  
20 H. 6. 1.  
7 E. 4. 14.

the Day given by the Writ, &c. Now if the Party who was returned warned doth not come to appear, then he who was excommunicated shall have another Writ unto the Sheriff for to deliver him, &c. if he hath apprehended him; and if he hath not taken him, that he do surcease for to apprehend him, &c.

And if a Man be excommunicated by the Bishop, and after the Vicar-General certifieth the same into the Chancery, because the Bishop is *in remotis*, for which a *Significavit* is granted, and he is taken by it; and then he who is apprehended, by his Friends sheweth in the Chancery how that he hath appealed unto the Court of *Canterbury*, which he followeth with Effect: Upon this Surmise he shall have a Writ unto the Sheriff, who hath the Party excommunge in his Custody, commanding him that he warn the Bishop or the Vicar-General, and him who sued the Process against the Party excommunge to appear in a certain Day in the Chancery, to shew wherefore the Party should not (*pendente Appellatione*) be delivered; and also to cause the Party excommunge under safe Custody to come, and to do as the Court shall consider in the said Cause.

If the Bishop do excommunicate a Man, and certifieth the same into D the Chancery, and thereupon a *Significavit* is awarded, and the Party taken thereby, and he sueth Appeal in the Court of *Canterbury*, or of *Rome*, &c. and hath a *Scire facias* against the Bishop as aforesaid, and against the Party, to answer in Chancery, and shew Cause why he should not be delivered; by which the Bishop and the Party are warned, and appear not, for which Cause the Party is delivered: Now if he who is excommunicated will sue any Action in the Common Pleas, or in the King's Bench, or elsewhere, if he think the other Party will plead the Excommunication against him in the Common Pleas, or elsewhere, then he shall have a special Writ of *Significavit* unto the Justices of the Court where he sueth, rehearsing all the Matter as aforesaid, &c. commanding them to proceed *secundum Legem & consuetudinem Regni*.

If the Bishop certify into the Chancery an Excommunication made E at the Suit of any one, and thereupon a *Significavit* is awarded, and the Party apprehended; now he who is apprehended may by his Friends shew in the Chancery, that he sued an Appeal from that Sentence in the Court of *Canterbury* with Effect, and by *Scire facias* against the Bishop, and the Party at whose Suit he was excommunicated, returned at a certain Day into the Chancery: And thereupon he shall have a Writ unto the Sheriff, rehearsing all the Matter, commanding him thereby to warn the Bishop and the Party to be in the Chancery at the Day of the Return of the Writ, to shew what they can say wherefore the Party shall not be delivered; and also by the same Writ commanding the Sheriff that he take sufficient Sureties of the Party excommunicated to appear in the Chancery at the same Day, and to carry him back again unto Prison, if the Court at the same Day shall so think fit; and in the mean Time to let him go at large by his Sureties, &c. and then if at the Day of the Return of the Writ the Party excommunicated doth not



not appear, nor his Bail, then shall a new Writ be awarded unto the Sheriff to apprehend the Party excommunicated again, *Ec. donec sanctæ Ecclesiæ tam de contemptu quam de injuria ab eo fuerit satisfact'*; and also to arrest the Bail, to appear before the King in his Bench at a certain Day, *Ec. ad satisfaciend' tam nobis quam præf. Episcopo*, and him at whose Suit he was excommunicated; and farther to do as the Court shall award. And if at the Day given in Chancery by the Writ of *Scire facias*, the Bishop, and the Party at whose Suit he was excommunicated, do appear, and also he who was excommunicated, and the Matter cannot be determined that Day; then Day shall be given over unto both Parties, at a certain Day at another Term, *Ec.* and then the Party excommunicate shall have a special *Superfedeas* unto the Sheriff, rehearsing the whole Matter, commanding him that he do not apprehend him till that Day, *Ec.* if he have not other Commandment from the King, *Ec.*

A There are other Writs in the Register which are called Writs of *Significavit*, because they shall not be granted before that the Bishop hath made Certificate by his Letters under his Seal of the Matter in the Chancery, upon the which the Writs shall be so granted. And the Writ is, where a Man is a Clerk convict of Felony, and afterwards makes his Purgation; now the Bishop shall certify this Purgation into the Chancery by his Letters, *Ec.* and thereupon the Clerk convict shall have a special Writ out of the Chancery directed unto the Sheriff, to restore him to his Goods and Chattels. [66.]

*Rex Vic' Lincoln' salut' Cum C. de P. Persona Ecclesiæ de R. nuper ie raptu uxoris S. & de asportac' bonorum suorum, coram dilecto & fideli nostro W. & sociis suis Justic' nostris, prout mos est, eid' Episcopo liberatus, ibid' innocentiam suam super eodem crimine coram eodem Ordinario legitime purgaverit, sicut idem Episc' per Literas suas patentes nobis signific'*; *Tibi præcipimus, quod eid' C. terras, bona & catalla sua per te in manum nostram occasione præmiss. capta, nisi fugam fecerit ead' occasione, sine dilatione restituas, de gratia nostra speciali. Teste, &c.*

And the like Writ for the Heir of the Clerk, after his Death, to deliver the Lands unto him, *Ec.* and in the End of the Writ are these Words, *sine dilatione de gratia nostra speciali*, by which it seemeth that these Words, *de gratia nostra speciali*, are not necessary Words, but Words of Form for the King's Honour, and that the King of Right ought to make such Restitution.

B And if a Man do demand his Clergy before the Justices, and reads as a Clerk, and the Ordinary is demanded, and cometh not, for which the Justices command the Clerk to Gaol again, *Ec.* now at the Suit of the Ordinary, or of his Vicar-General, unto the King, or his Chancellor, he shall have a Writ out of the Chancery directed to the Justices of Gaol-delivery, reciting the Matter, commanding them that they send unto the Gaoler to deliver him unto the Ordinary. Clergy. V. 4 E. Dy. 215. Stamf. 108.

C And if a Man be taken out of a Church, or out of Sanctuary against Sanctuary, his Will: Now if the Bishop certify the Matter by his Letters Patent under his Seal into the Chancery, *Ec.* desiring Restitution; then the King shall send his Writ unto the Justices of Gaol-delivery, reciting the Matter,

Matter, commanding them to bring back the Party to the Place from whence he was taken.

If an Abbot or Prior certifieth by his Letters under his Seal, that his D Monk, Friar, Canon, is vagrant out of his Order, &c. in the Country; then upon that Certificate he shall have a Writ unto the Sheriff, to arrest and apprehend him, and to deliver him unto his Abbot or Prior, &c. or to their Attorney, to chastise him according to the Rule of his Order, &c.

*Writ de Homine replegiando.*

Samf. 71. **I**N divers Cafes a Man shall not have this Writ, although he be taken E and detained in Prison: As if a Man be apprehended for the Death of a Man, or be taken by the King's Command; (a) or if a Man be apprehended by the Command of the Chief Justice, as it appeareth by the Register. But the Stat. of *West. 1.* is, that he shall not be repleviable, if he be taken by the Command of the Justices, and doth not say of the Chief Justice.

*West. 1. c. 5.*

*Post. 189.*

And also if a Man be taken by the Command of the Justices of the Forest, or if a Man be outlawed, or if a Man abjure the Realm, or if a Man be Approver, or if a Man be taken for Felony with the Manner; or those who break the King's Prison, or those who are common or known Thieves, or those who are appealed by Approver so long as the Approvers live, if they be not of good Fame, or for burning of Houses feloniously, or those who counterfeit the King's Money, or the King's Seal, or those who are taken by Certificate of the Bishop by a Writ *de Excommunicato capiendo*, or those who are apprehended for Treason, or those who are convicted by a Writ of *Redisseisin*, &c. all these Persons are notailable by this common Writ *de Homine replegiando*. But first they ought to make their Fines, or agree with the King, and thereupon to have a special Writ to the Justices, or those who do keep them in Prison, reciting how they have been fined, commanding them for to deliver them.

8 H. 4. 21.

but 8 H. 4.

16. cont. See

78 D. & 9 H.

4. 2.

(b) And if two or three Men be taken and imprisoned, they may sue a F joint Writ *de Homine replegiando*. And yet H. 8 H. 4. 31. such a Writ sued by two was abated; but yet it seems the Law is, they may sue jointly, and the Writ shall be such:

*Rex Vic' Lincoln', &c. Præcipimus tibi, quod juste & sine dilat' repleg' fac' B. C. & D. quos tu ipse cepisti & captos tenes ut dicitur; vel, quos D. & E. ceperunt & capt' tenent, ut dicitur; nisi capti fuerint per special' præcept' nostrum, vel capitalis Justic' nostri, vel pro morte homin', vel pro Foresta nostra,*

2

(a) See 14 H. 6. 8. A Diversity where one is imprisoned on a Suggestion without Writ, as by Justices of Peace, Magistrate of a Town, or Lord of a Vill or Manor, on the Statute of Labourers, &c. there he

may be discharged by them, without any Writ from the King; but it is otherwise if they are imprisoned by Writ.

(b) See accordant 8 E. 4. 16. a. 12 E. 4. 4. con. 8 H. 4. 21. b.



*nostra, vel pro aliquo alio recto, quare secundum consuet' Angl' non sint repleg'; ne amplius clamorem inde audiamus pro defectu justitiæ. Teste, &c.*

And upon that he shall have an *Alias* and *Pluries*, and Attachment, if need be. But if he who apprehendeth the Man do claim him as his Villain, and the same is returned by the Sheriff upon the *Alias* or the *Pluries*, then the Plaintiff shall have another Writ of *Pluries* to the Sheriff thus:

*Rex, Vic', &c. Quum tibi plur' præceperimus, quod injuste, &c. W. quem H. cepit, & capt' tenet, ut dicitur, nisi capt' esset, &c. non sit replegiabilis, vel nobis causam significares, quare, &c. ac tu nobis retornasti, quod accessisti ad Manerium prædict' H. ad replegiand' ibidem præd' W. juxta tenorem mandati nostr' præd', sed præd' H. deliberation' corporis ipsius W. non fieri permisit, eo quod asserit ipsum W. esse nativum & fugitivum suum Manerii sui præd' clamando jus nativitatis & servitutis in persona ipsius W. infra dominium Manerii sui, &c. Nos nolentes quod præd' W. si liber homo sit, per hujusmodi caption' & clameum lege communi destituat', tibi præcipimus quod si præd' W. invener' tibi sufficient' Caution', &c. essendi coram nobis a die S. Mich' in xv. dies, &c. ad respond' præf. H. si, &c. tunc ipsum W. interim rep' fac', juxta tenor' mandatorum nostrorum, &c. Et nihilominus si præd' W. fecerit te secur' de clam' suo, &c. tunc pone per vad', &c. præd' H. quod sit coram nobis ad diem prædictum, præd' W. de captione & clameo præd' resp'. Et habeas ibi nomina Pleg', & hoc Breve, &c.*

[67.]

And in the same Manner it shall be done in a *Homine replegiando*: 11 H. 4. 25.  
If the Defendant claim the Plaintiff as his Ward, then upon that returned at the *Pluries* by the Sheriff, the Plaintiff shall have a special Writ as aforesaid, reciting that he holdeth the same Land of the Defendant by Socage, and not by Knights-Service; commanding the Sheriff for to deliver him, and to admit the Defendant by Pledges to appear at a certain Day, as afore is said, to answer unto the Plaintiff, &c.

A And if a Man be taken within the Cinque Ports, then he shall have a Writ de Homine replegiando, directed unto the Constable of Dover, and unto the Warden of the Cinque Ports, or his Lieutenant, in the Nature of an *Audita querela*, and the Writ shall be,

*Rex dilecto, &c. Constabular' Capri sui Dover', &c. & Custod' Quinque portuum suorum, vel ejus locum tenenti, salutem. Mandamus vobis, quod audita querela A. quem B. cepit, & infra libertat' Portuum prædict' captum tenet, ut dicitur, vocatisque coram vobis partibus præd', auditisque hinc inde eorum rationibus, ipsum A. si secundum Legem & Consuetud' Portuum præd' replegiabilis fuerit, replegiari faciatis, nisi capt' sit per speciale præceptum nostrum, vel capitalis Justic' nostri, &c. ne amplius inde clamorem audiamus pro defectu justitiæ, &c.*

And if a Man be taken by the Officers of the Forest, then he shall have a Writ de Homine replegiando unto the Keeper of the Forest, in such Form, viz.

*Lex dilecto & fideli suo W. de B. Custodi Forestæ suæ citra Trent', vel ejus locum tenenti in Foresta de S. Mandamus vobis, quod si A. & B. capti & detenti in Foresta de S. pro transgr' Venationis per ipsos facta, ut dicitur, unde indictat' sunt, inven' vobis, viz. uterque eorum, duodecim probos &*

*legales homines de Balliva vestra, qui eos manucaptant habere coram Justic' nostris (a) proximi itinerantibus ad Placita Forestæ in Com' N. cum in partes illas venerint, ad stand' recto de transg' præd'; tunc ipsos A. & B. si secundum Ass. Forestæ replegiabiles fuer' præd' xii. interim tradas in ball', sicut præd' est: Et habeas ibi nomina illorum xii. hominum, & hoc Breve. Teste, &c.*

And if the Warden will not bail him, he shall have an *Alias* and **B** *Pluries* against the Warden, directed unto the Sheriff, to attach him to answer before the King in his Bench, and to shew wherefore he has not replevied him, &c. And in the same Writ it shall be contained, that he call to him the Verderors, to deliver him who is so taken in the Presence of the Verderors by good Bail, and that the Sheriff do deliver the **C** Names of the Bail unto the same Verderors, to answer before the Justices in the next Eyre. And no Man shall be taken nor imprisoned for Vert or Venison, if he be not found in the Manner, or indicted; in which Case he shall be set to Bail by the Warden *ex Officio*, or otherwise by Writ, as is aforesaid, &c.

For hunting in the King's Chases, or in the Chases of other Men, **D** he ought to be sued at the Common Law; and for the same a Man shall not be taken and imprisoned, until he be convicted at the Common Law in an Action there brought against him. But for hunting in Parks, &c. the Party shall have an Action within the Year and Day upon the Statute of *West. 1. cap. 20.* But after the Year and Day the King shall have Suit.

Replevin of  
a Park.

And if a Man hath any Park within the Bounds of any Forest, which **E** Park is not inclosed according unto the Assise of the Forest, &c. then it shall be seised into the King's Hands; and then the Party shall have a special Writ of *Replevin*, to replevy a Park out of the King's Hands: And the Writ is such,

*Rex dilect' & fideli suo W. B. Custodi, &c. vel ejus locum tenenti in Foresta de S. salut'. Mandamus vobis, quod Parcum A. de B. & I. qui est infra metas Forestæ nostræ præd', & qui, pro eo quod non includitur secundum Assisam Forestæ, captus est, ut dicitur, in manum nostram, si secundum Assisam Forestæ replegiabilis existat, eidem A. usque ad adventum Justic' Placit' Forestæ in Com' prædict' replegiari fac'. Teste, &c.*

5 H. 7. 3.

13 H. 7. 17.  
but the better  
Opinion is,  
that it is in  
the Judges  
Discretion.

But 6 E. 4. 8.

& 12 E. 4. 4.

that he shall  
not find

Surety.

[68.]

In a *Homine replegiando*, the Defendant claims the Plaintiff for his **F** Villain, and the Plaintiff pleads that he is free, and saith that the Defendant hath taken his Goods, and prays that he may gage Deliverance, &c. for which the Defendant doth gage Deliverance. But the Plaintiff shall not find Sureties that he shall re-deliver the Goods, &c. if he be found Villain. *Quod vi. M. 6 E. 4. 8.*

But in a *Homine replegiando*, if the Defendant claim the Plaintiff as **G** his Villain, the Plaintiff ought to find Sureties to deliver his Body to the Defendant if he be found his Villain. *Quod vid. P. 31 E. 3.*

In a *Homine repleg'* the Plaintiff was bound in a Recognizance in a **A** certain Sum of Money unto the Defendant's Use, that he would sue him

(a) See int' Roll' Ordinationum anno 5 Edw. 2. of Indisements of the Forest.



him *cum effectu*; and if the Writ be abated for any Cause, yet he ought to sue another Writ for that Taking, &c. otherwise he shall forfeit that Recognisance, as it appeareth. *H. 8 H. 4.*

**B** If a Man sue a *Homine repleg'* and the Defendant claim the Plaintiff for his Villain, if the Sherriff return the same upon the *Alias*, or upon the *Pluries*, in the King's Bench, or Common Pleas, where the Writ is returnable; then upon Sureties found in Court where the Writ is returned by the Plaintiff to yield his Body, &c. he shall have a special Writ unto the Sheriff for to deliver the Plaintiff out of Prison, &c. But by the Register he shall have a special Writ unto the Sheriff to take Sureties of the Plaintiff, and to sue with Effect, and to yield his Body, if, &c. But the Usage at this Day is, that he find Sureties in Court, &c. and not to award a Writ unto the Sheriff to take Sureties. *Quod vid. M. 8 H. 4. 3.*

**C** And in a *Homine repleg'* if the Sheriff return that the Defendant hath esloined the Plaintiff's Body, so that he cannot deliver him; then the Plaintiff shall have a *Capias in Withernam* to take the Defendant's Body, and to keep the same *quousque*, &c. (a) whether he be a Peer of the Realm, or other common Person. And if the Sheriff return *Non est inventus* in this *Capias in Withernam* of the Body, then the Plaintiff shall have a *Capias in Withernam* against the Defendant's Goods, &c. *Quod 11 H. 4. 15. b. vide M. 11 H. 4. in Title of Withernam.*

## (b) Writ de Replegiare de Averiis.

**D** IF a Man take more live Cattle than one Beast, then the Writ is  
such, X 2 Rex,

(a) A *Capias* lies against a Peerefs of the Realm on a Rescous, returned made by the Baron. *1 H. 5. 14. a.*

(b) Note; A Replevin is Viscontiel by Reason of this Clause. *Et postea eam inde juste dedui fac'*. But by the *Pluries*, without Question the Sheriff's Power to proceed in the County-Court is determined; as was clearly held by all. If the Sheriff does not execute the Writ, but returns *Elongata*, it was doubted if the Sheriff shall execute the Writ, by Reason the Words (*vel ipse sit*) are Conditionals. *2 H. 7. 5.*

Note on the *Pluries*, the Parties have no Day in Court, but only the Sheriff; yet he may return Pledges on the *Pluries*, or on the Replevin if it be found; and yet the Plaintiff may come at the Return of the *Pluries*, and take Issue on the Cause returned by the Sheriff, so as to entitle himself to Damages against the Sheriff, and the King to a Fine for his Contempt. But if at the Return of the *Pluries*, the Plaintiff, and also the Defendant appear, they may plead, &c. And also (by *Aston*)

If the Defendant appears, he may compel the Plaintiff to Count (*instante*) although they have no Day in Court, and by the same Reason may cause the Plaintiff to be called upon a Nonsuit. See *22 H. 6. 21. Brownfleet's Case. 2 H. 7. 5.* But the Defendant without Doubt is not compellable to come in at the Day of the *Pluries*, but if he does, he may plead with the Plaintiff, and the Plaintiff may find Pledges in Court instantly. See *R. Entr. 560. b.* where the Plaintiff at the Day of the Return of the *Pluries* (if the Writ be executed) may have an Attachment against the Defendant *ad respondend' de placito quare cepit Averia*, &c. *R. Entr. 570.* Or if the Sheriff returns *Elongata*, then the Plaintiff shall have a *Withernam*, wherein is also contained an Attachment against the Defendant; and by the *Withernam* Day is given to both Parties, so that if the *Withernam* be returned *tarde*, then the Defendant at the Day may compel the Plaintiff to Count; but otherwise it is if the *Withernam* be not returned served, because then the Parties have no  
Day

Plow. 223. a.

Rex, &c. *Præcipimus tibi quod iusto & sine dilatione replegiari (a) fac' B. Avera sua, quæ D. cepit & injuste detinet, ut dicitur; & postea eum inde iuste deduci fac', ne amplius inde clamorem audiamus pro defectu iustitiæ, &c.*

But if he take but one live Beast, then the Writ shall be,

Rex, &c. *Præcipimus quod repl' fac' B. quendam equum suum, vel quoddam jumentum suum, vel bovem suum, &c. (b)*

Dyer 229. a.

And if a Man take a dead Chattel, then the Writ shall be,

Rex, &c. *Præcipimus, &c. quod repl' fac' B. Bona & Catalla sua.* And in the Count he ought to declare of divers Things: But if he take but one Thing which is a dead Chattel, then the Writ shall be,

Rex, &c. *Præcipimus, tibi, &c. quod repleg' fac' B. quodd' rete, vel E quoddam examen apium suarum, vel quoddam ferr' molend' sui.* And if the Sheriff doth nothing upon this Writ, then he shall have an *Alias repleg' fac', &c.* and in the same Writ he may have this Clause; *Vel causam nobis significes, quare mand' nostrum al' tibi inde direct' exequi nobuisti, vel non potuisti, &c.* And then this Writ shall be returned into the (c) King's Bench or Common Pleas. And if he do not serve this Writ, then he shall have a *Pluries* returnable into the King's Bench, or into the Common Pleas. And in the *Pluries* is always this Clause; *vel causam nobis significes*: But not in the *Alias repleg'*, if not that the Party will have it put in the Writ. And the Plaintiff may sue all these Writs forth together, *viz.* the *Replevin*, the *Alias* and the *Pluries*, and deliver them unto the Sheriff all at one Time, if he so see good. And if the Sheriff doth not return the *Pluries*, then the Plaintiff may have an Attachment against the Sheriff, (d) directed unto the Coroners.

And

Day in Court but by the Roll, and therefore the Plaintiff cannot be Nonsuit, but may Count. 22 H. 6. 22. by *Newton*.

A Nonsuit was in Replevy, where the Plaintiff did not find Pledges; but if the Plaintiff has found Pledges, and the Sheriff on the Attachment in the *Withernam* returns that the Defendant *Nihil*, yet it seems he may come in by a Day on the Roll, and the Plaintiff shall be called; and if he be nonsuited, a special Writ of Delivery on the *Withernam* shall be granted to the Defendant, and a Return of the Beasts; notwithstanding the Return of the Sheriff, if in Truth the Sheriff had made Deliverance of them to the Plaintiff or not, and so force the Plaintiff to a *second Deliverance*. Dyer 189. *Quare* if the Writ of second Deliverance be not taken away by a late Statute.

(a) And he may count of several Takings, Part at one Day and Place, and Part at another Day and Place. 29 E. 3. 23. adjudged.

(b) So it may be of a Horse, &c. and if the Sheriff make Deliverance of a Horse to the Defendant, he shall not have Trespass, because he might have claimed Property; but of a Stranger's Horse not Party to the Writ, he may have Trespass against the Sheriff. 14 H. 4. 24. 21 E. 4. 16. & 54. And *Quare*, Whether Trespass lies against the Sheriff for replevying a Stranger's Beast, by the Plaintiff's own Shewing or Direction. *Kelw.* 119. per *Fod.*

(c) See Dyer 189. A Return in Chancery, and note by the *Pluries*, the Power of the Sheriff is determined. 11 H. 4. 49.

(d) See 44 Aff. 15. An Attachment against the Sheriff to have a Replevin directed to the Coroners, and the Sheriff returns the Attachment & *Elongata* for the Beasts; whereupon a *Disfringas* against the Sheriff, with a *Withernam* issued, and he returns the *Disfringas* with a Taking in *Withernam*; and now comes the Plaintiff, and prays a Writ of Deliverance of the Beasts taken in *Withernam*; and the Defendant comes and prays that the Plaintiff may

gage



**F** And it appeareth by the Register, that if the Sheriff return upon the *Replevin*, *Sicut Alias* or *Pluries*, that he hath sent unto the Bailiff of the Franchise, &c. who hath given him no Answer, or that he will not make Deliverance, &c. then the Plaintiff shall have a *Non omittas* unto the Sheriff, that he enter into the Franchise and make Return; and if the Sheriff doth not do so, he shall have an *Alias non admittas* directed unto the Sheriff, and afterwards a *Pluries non omit*, &c. But it seemeth that that Return, *Quod mandavi Ballivo libertatis*, &c. *qui nullum mihi dedit responsum*, or the Return that the Bailiff will not make Deliverance of the Cattle, are not good Returns. For by the Statute of *West. 1. cap. 17.* in the End of the Statute it appeareth, that the Sheriff upon such a Return made to him by his Bailiff, ought presently to enter into the Franchise, and to make Deliverance of the Cattle taken: And so it appeareth the Sheriff may do by the Statute of *Marlebridge, cap. 21.* If a Plea of *Withernam* be in the County by Plaint before the Sheriff, and the Sheriff send unto the Bailiff of the Liberty to make Deliverance, and the Bailiff doth nothing, that then the Sheriff *ex officio* may enter into the Liberty without any Writ directed unto him in that Case.

**G** (a) And if the Sheriff upon the *Pluries* return, *quod prædict' B. Averiæ præd' A. cepit, & ea fugavit de Com' præd' in Com' F. per quod ea eidem A. repl' non potuit*, &c. or if the Sheriff return that he sent to the Bailiff of the Liberty of *D.* who hath Return of Writs, &c. who gave him Answer, that the Cattle are esloined into divers Liberties, by Reason whereof he cannot have a View of them, nor deliver the Cattle; or if the Sheriff return, that he himself cannot have View of the Cattle to deliver them; or if he return, that after the Taking, &c. that the Defendant hath esloined the Cattle out of his Bailiwick that he cannot deliver them; or if he return that the Defendant hath esloined them into unknown Places, that he cannot have View of them, to deliver them; or if the Sheriff return, that he sent unto the Bailiff of the Liberty, who answered him, that the Defendant had impounded the Cattle within the Rectory of the Church of *C.* for which Cause he cannot deliver them, &c. Upon these Returns made by the Sheriff, the Plaintiff shall have a Writ of *Withernam*, to take as many of the Defendant's Cattle, directed unto Sheriff; and the Writ shall be such,

[ 69.]

Rex

gage Deliverance of them, for that Part of the Beasts so taken were dead in Pound, &c. and the Residue he his ready to deliver; and because he had not Part (ready) at the Day in Court, the Plaintiff was directed to sue a Writ to the Coroners to deliver the first Beasts, and to attach the Defendant to answer, and on the Return thereof the Plaintiff might plead, &c.

(a) If the Sheriff return that the Beasts are inclosed in a Park among Savages, or inclosed in a Cattle, &c. he shall be amerced, and another Writ of *Replevin* shall be awarded; for he ought to have

taken the *Posse Comitat'*. 8 H. 4. 18. for it was a Denial.

On a *Pluries* to the Sheriffs of *London*, they return the Custom of the City, that *Replevin* ought to be made in the Sheriff's Court there, and not by the King's Writ, & *non allocatur*, and an Attachment was granted. *Dyer* 254.

See a *Replevin* against him who distrained for the King for 15 s. 20 E. 3. *Avowry* 130. 19 E. 2. *Avowry* 223. and note on an excessive Distress the Plaintiff may recover Damage there. 11 R. 2. *Avowry* 87.

Withernam.

Rex Vic', &c. Cum plur' tibi præceperimus, quod injuste, &c. A. Avera A sua quæ B. &c. detinet, ut dicitur, vel causam nobis signific', quare mandatum nostrum plur' inde tibi direct' exequi noluisti, vel non potuisti; ac tu nobis significaveris, quod postquam præd' B. Avera præd' A. cepit, in Com' tuum ea fugaverit, & de Com' præd' in Com' C. per quod ea eidem A. replegiar' non potuisti: Nos, malitiæ ipsius B. obviare volentes in hac parte, tibi præcipimus, quod Avera præd' B. in Balliva tua sine dilatione capias in Withern', & ea detineas, donec eidem A. Avera sua præd', secundum consuetud' regni nostri, replegiare possis, juxta tenorem mandatorum nostrorum præd' prius tibi, &c.

And note that in the Writ of *Withernam*, the Cause which the Sheriff B returned upon the *Pluries*, &c. ought to be put and rehearsed in the Writ of *Withernam*, as before is said. And if the Sheriff return upon the *Pluries*, that he hath sent unto the Bailiff of the Liberty, and that he answers him that the Beasts are esloined, &c. then he shall have a *Withernam* directed unto the Sheriff, and the Sheriff shall send his Bailiff into the Liberty to sue the *Withernam*; and if the Bailiff do not Execution, nor give answer unto the Sheriff of the Precept directed unto him, then the Plaintiff shall have a *Withernam* directed unto the Sheriff, with *Non omittas propter aliquam libertatem, &c. quin eam ingrediaris, &c.* and to take the Cattle in *Withernam*, &c.

(a) And it appeareth by the Register, if a Man sue a Replevin in C the County without Writ, and the Bailiff return unto the Sheriff that he cannot have View of the Cattle to deliver them; then the Sheriff by Enquest of Office, ought for to enquire thereof: And if it be found by the Jury that the Cattle are esloined, &c. then the Sheriff in the County-Court may award a *Withernam* to take the Defendant's Cattle. And if the Sheriff will not award a *Withernam*, then the Plaintiff shall have a Writ out of the Chancery directed unto the Sheriff, rehearsing the whole Matter, commanding him for to award a *Withernam*, &c. And he may have an *Alias*, and after a *Pluries* and Attachment against the Sheriff, if he will not execute the King's Command, &c.

(b) And a Man shall have a Replevin of divers Cattle that are taken; D As if a Man take divers Cows or Sheep, and afterwards they have Calves or Lambs, the Plaintiff shall have his Replevin of them all, as well as of the Cows and Sheep which were taken.

Vid. 16 H. 7. And the Sheriff, upon a Complaint made unto him of taking of the E Cattle, may command his Bailiff by Word for to replevy them (c); 14. that a Precept to the Bailiff by Word, is as good as by Writing.

and

(a) See 30 E. 3. 23. By the Usage of the City of Northampton, the Frankpledge of the Vill may make Deliverance in the Absence of the Bailiff.

(b) Where on the Issue, that he did not take, and the special Matter found, it shall be adjudged for the Plaintiff. 18 E. 3. 43. See 12 E. 4. 5.

(c) He may command his Bailiff on a Plaint made to him, and this is by the

Statute of *Mauric. c. 21.* and there the Sheriff himself is Judge. 28 H. 6. *Retorn' de Vic'*. 17 Dyer 245. But if the Party (Defendant) claims Property, the Sheriff cannot in that Case make Replevin.

See a Replevin against Executors of Goods taken by the Testator. 14 H. 4. 29. 33 E. 3. *Avowry* 257. See a Replevin of Beasts *Domus & Ecclesia capti tempore prædecessoris*. 9 H. 6. 25.



and the same is as well as if the Sheriff had made his Warrant to his Bailiff to have replevied them; for it may be that the Sheriff nor his Bailiff cannot write, or that they may want such Things wherewith they may write a Warrant, &c.

F And the Lord shall have a Replevin if his Villain's Cattle are taken; and yet he had not Property in them at the Time of the Taking, but now by his Claim he hath, &c. But it seemeth he shall not have Damages for the Taking of the Cattle, but only for the Detaining of them, if the same be found for him. 9 H. 6. 26. 42 E. 3. 28. or 8. 1 Inst. 145. b.  
33 E. 3. Replevin. 43.  
9 H. 7. 22.  
14 H. 4. 4.

G (a) And if a Man take Cattle for Damage-feasant, and the other tenders Amends, and he refuseth it, &c. now if he sueth a Replevin for the Cattle, he shall recover Damages only for the Detaining of them, and not for the Taking of them, for that the same was lawful, and therefore no Return shall be. See 22 H. 7. 30. *contr.* in Case of Trespas.

H And if the Lord distrain his Tenant's Cattle wrongfully, and afterwards the Cattle return back unto the Tenant; yet the Tenant shall have a Replevin against the Lord for those Cattle, and shall recover Damages for the wrongful Distraining of them, because he cannot have an Action of Trespas against his Lord for that Distress: But against a Bailiff or Servant he may. 1 H. 6. 7.

I (b) And if a Man do distrain Cattle in one County, and drive the Cattle into another County, the Party may sue a Replevin in which of the Counties he will, but not in both the Counties. See 19 H. 6. 34, &c.

K And if the Cattle of a Feme sole be taken, and afterwards she marry a Husband, the Husband alone may have a Replevin. *Quod vide Trin.* 33 E. 3. See 33 E. 3. pl. 43. *Bro. Bar. & Fem.* 85. *contr.*

L (c) And in a Replevin, if the Plaintiff do declare, that the Defendant

(a) See 27 E. 3. 8. b. 45 E. 3. 9. But if the other had them in Pound before Amends tendred, it is then too late to tender the Amends, and on the Avowry the Defendant shall have no Return till a new Tender, and then the Party may have Detinue. *Quare* 13 H. 4. 17. 14 H. 4. 4. And if he tenders before the Taking, the Taking is tortious. 7 E. 3. 8. and if immediately on the Taking, the Detainer is so, and he may recover Damages for it, and no Return shall be awarded to the Lord. 45 E. 3. 9.

If the Tenant tenders his Fealty and yet the Lord distrains and avows for it, the Tenant cannot plead the Tender, without saying he is still ready to perform it, and he ought to make the Fealty in Court. See 3 E. 2. *Avowry* 187. If the Tenant tenders his Homage, and the Lord refuse, he cannot afterwards distrain for it, without a new Demand and Refusal. 20 E. 3. *Avowry* 123.

(b) See where Replevin does not lie in this Case, but he is put to his Writ on the Statute, and therefore the Writ to the Sheriff of the County where the Beasts were taken was abated. *Temp. E.* 1. *Avowry* 194. *Dyer* 169. *Post.* 84. P. See 19 H. 6. 34. 21 H. 6.— 11 H. 4. 10. 42 E. 3.—

(c) So if the Defendant claims Property, or says that he did not take, &c. If in the mean Time the Beasts die, or are sold, so that he cannot have a Return, he may recover all in Damages, if it be found for him. 7 H. 4. 18. the Defendant claimed Property in C. B. and they are at Issue, and it was found for the Plaintiff, it seems he shall recover the Value of the Thing taken, and his Damages. 11 H. 4. 10. If the Defendant makes Conusance and avows, and after Day given over makes Default, the Plaintiff shall recover his Damages by Taxation of the Court. 14 H. 4. 2.

dant yet hath and detaineth the Cattle, and the Defendant doth appear, and afterwards maketh Default; the Plaintiff shall have Judgment to recover all in Damages, as well the Value of the Cattle, as Damages for the Taking of them, and his Costs. *M. 8 H. 8. Rot. 108. See Lutw. 1150.*

See the Record hereof  
Co. Entr. 610,  
611.

### Writ de Pone de remover le Plea.

**N**OTE, that if a Replevin be sued by Writ out of the Chancery, **M** then if the Plaintiff or Defendant will remove that Plaint out of the County into the Common Pleas, or King's Bench, he ought to sue a Writ out of the Chancery, which is called a *Pone*; and the Writ shall be such,

*Rex Vic' Lincoln' salutem. Pone, ad Petitionem petentis, coram Justic' nostris apud Westm' tali die Loquelam quæ est in Com' tuo per Breve nostrum, inter A. & B. de Averiis ipsius A. captis & injuste detentis, ut dicitur; & sum' per bonos Sum' præd' B. quod tunc sit ibi præf. A. inde respons. Et habeas ibi Sum', & hoc Breve.*

And if the Writ of *Pone* shall be removed into the King's Bench, then the Writ is such,

*Rex, &c. Pone, ad Petitionem petentis, coram nobis, ubicunq; tunc fuerimus in Anglia, Loquelam, &c.*

(a) And this Writ is sued for the Plaintiff without putting any Cause in the Writ of the Removement, &c.

**[70.]** But if the Defendant will remove the Plea in the County upon a Replevin sued by Writ, then he ought to put an evident Cause in (b) **A** the Writ after the Teste of the Writ; and the Form of the Writ is such,

*Rex*

(a) *Pone* (at the Defendant's Suit) *loquelam quæ est in Com' tuo int' A. & B. de Averiis ipsius A. capti, &c.* and says *præfato B.* where it should be *præf. A. Rolph* came for *A.* the Plaintiff in the Replevin, and pray'd Damages, because otherwise he had no Remedy; for the *Pone* is abateable, and so held the Court, being without Warrant; and yet it shall not be remanded because both are the King's Courts, and a new *Pone* does not lie in this Case, because the Plaint shall stand. *Martyn, Baker and Passon contra*, That a *Pone* or *Recordare* is only to remove the Plaint, so that when the Plaint is removed, the *Pone* or *Recordare* is determined, and the Court shall hold Plea on the Plaint, and not on the Writ of *Recordari*, so that the Pledges first found still remain, and the *Pone* or *Recordari* shall ne-

ver abate: And for that the Court in this Case is seised of the Plaint, but the Plaintiff has no Day; the Court shall make a special Writ to the Sheriff, to warn the Plaintiff to pursue his Plaint. *Et sic factum fuit.* 3 H. 6. 2. A Plaint is well removed, although the *Pone* bears Date before the Plaint entered. 1 R. 3. 4. So if the Plaint be removed by *Certiorari*, where it ought to be by *Pone* or *Recordari*. See 7 E. 4. 23. So if one Plaint is removed where another ought to have been, *ibid.* or where there is a Variance between the Plaint and the Writ. 6 E. 3. 55. 8 E. 3. 71. See 13 E. 1. *Admeasurement* 17.

(b) But the Cause may be traversable, for that both are the King's Courts. *Vide* the Note *supra* & *Post*. 119. G.



Rex Vic', &c. Pone coram Justiciariis nostris apud Westm' tali die Loquel' que est in Com' tuo per Breve nostr' int' A. & B. de Averii ipsius A. captis & injuste detentis, ut dicitur; & dic' præf. A. quod sit ibi, Loquelam suam versus præd' B. inde prosecutur', si voluerit: Et habeas ibi hoc Breve, & aliud Breve. Teste, &c. Et quia præd' B. cepit Averia præd' in feodo suo pro Consuetud' & Servic' sibi debitis, ut dicit', Fiat executio istius Brevis si causa sit vera, & præd' B. petit, & aliter non. And he (a) may shew divers other Causes: Quia præd' B. & C. ceper' Averia præd' in feod' ipsius B. pro Consuetud', &c. Fiat executio, &c. ut supra. Or thus: Quia A. Clericus D. Vic' Com' præd', qui frequenter in absentia Vic' Com' illius tenet Placita ejusdem Com', est Consang' præd' A. propter quod idem Vic' favet ips. A. in Loquela præd', ut dicitur, Fiat executio, &c. ut supra.

And he may shew any Cause which induceth any Favour that the Sheriff doth, or is like to do unto the Plaintiff. Or thus: Quia præd' B. clamat præd' A. esse Nativum suum, & ea occasione asserit Averia præd' esse sua propria, propter quod Loquela illa in Com' deduci non debeat, ut dicitur. Fiat executio, &c. ut supra.

And if a Replevin be sued by Writ in any other Lord's Court than in the King's Court, then the Pleint cannot be removed before the Justices by the Plaintiff, nor by the Defendant, without putting Cause in the Writ; and the Writ is, Pone ad Petition' petentis, Loquelam que est in Com' tuo per Breve nostrum inter C. & Abbat' de W. & I. de quadam equo ipsius R. capt' & injuste detento ut dicitur; & sum' per bonos hom' præd' Abbat' & I. quod tunc sint ibi præf. R. inde resp': Et habeas ibi hoc Breve, & aliud Breve. Teste, &c. Quia præd' Abbas est Dom' Cur' in C. in qua Loquela illa pendet per retorum Brevis nostri, per quod idem R. in Loquela prædicta in eadem Curia versus præf. Abbatem & I. justitiam consequi non potest, ut dicitur. Fiat executio, &c. ut supra.

And if the Plea be removed at the Suit of the Plaintiff, then when he hath shewed Cause in the End of the Writ, he shall say afterwards in the same Writ, Propt' quod idem Querens in Loquela sua præd' versus præf. B. in eadem Curia justitiam consequi non potest, ut dicitur.

And if the Plea be removed at the Suit of the Defendant, then after Cause shewed in the Writ, it shall be said, propter quod idem Ballivus favet ips. A. in Loquela sua præd', ut dicitur. Fiat executio, &c. ut supra (b).

Y

Writ

(a) Per Rolph, the Sheriff cannot return that the Cause is not true, 7 H. 6. 32. and notwithstanding the said Causes, the Defendant may avow for Damage-feasant. 10 E. 2. Avowry 213, 515. 20 E. 3. Avowry 130.

(b) See 21 H. 6. 50. If the Pleint be removed by the Defendant by Pone, at the Day in Bank the Plaintiff shall be called on a Nonsuit; and if he make Default, a

Return shall be awarded and no Process; but if the Plaintiff appears, and the Defendant makes Default, a Distringas shall issue, and after that Process of Outlawry. But if the Pleint be removed by Pone or Recordare by the Plaintiff, there if he makes Default, 'tis a Nonsuit if the Defendant Pone per Vad', and thereon issues a Distringas, &c. and so Process of Outlawry.

## Writ de Recordare.

6 H. 4. 1.  
6 E. 6. Plow.  
74.  
It appeareth  
by the Regi-  
ster, 6 & 7  
Br. Cause de  
remover Plea  
36. that by  
Recordare  
Pleas shall be  
removed ex-  
tra Durham  
& Cestriam:  
Yet these are  
Courts of  
Record.

**W**HEN the Plaint is in the County, and the Replevin sued there B  
without Writ; then if the Plaintiff or Defendant will remove  
that Plaint, he ought to sue a Writ of *Recordare* out of the Chancery,  
directed unto the Sheriff; and the Writ shall be such,

(a) *Rex Vic' Linc' salut' Præcipim' tibi, quod in pleno Com' tuo recordar' fac' Loquel' quæ est in eodem Com' sine Brevi nostro inter A. & B. de Averiiis ipsius A. captis & injuste detentis, ut dic' & Record' illud habeas coram Justiciariis nostr' apud Westm' tali die, &c. sub Sigillo tuo, & sub Sigillis quatuor legal' Milit' ejusdem Com' ex illis qui Recordar' illi interfuer'; & partibus eundem diem præfigas, quod tunc sint ibi, in Loquela illa prout justum fuerit processurum: Et habeas ibi nomina prædictor' quatuor Militum, & hoc Breve. Teste, &c. Fiat executio istius Brevis, si præd' A. hoc petat, & aliter non.*

27 H. 6. 3.  
*Quare.*  
Plow. 74.  
Bro. Court-  
Baron 22.

And thereby it appeareth, that the Plaintiff may remove the (b) Plaint by *Recordare*, without any Cause put in the Writ; but the Defendant cannot remove the Plaint by a *Recordare*, without shewing Cause in the Writ, as before is said upon the *Pone*. And the Causes for the Defendant ought to be such, *Quia præd' B. in placitando asserit se Averia præd' cepisse in separali solo suo, ut in dampn' suo ibid', in quo quidem solo præd' A. clam' habere Commun' Pastur', ut dic'; quæ quidem Loquela, eo quod tangit liber' Tenement' (ut prædict' est) in eodem Comitatu', secund' Legem & Consuetud' regni nostri sine Brevi nostro placitari non debet; Fiat executio istius Brevis, si causa sit vera, & præd' A. hoc petat.*

And if a Replevy be sued by Plaint, in the Court of any other Lord, than in the County-Court before the Sheriff, then the *Recordare* which is

(a) See 20 E. 3. 31. Where Beasts were taken in D. in the County of *Berks*, which was within the Precinct of the Honour of *Wallingford*, where the Plaintiff had Deliverance without Writ; and the Defendant sued a *Recordare* to the Sheriff of *Berks* *quod distrinxerit in Feodo, &c.* and at the Day the Plaintiff came, but the Defendant made Default. And it was adjudged, (1) That the Plaint was well removed, although the Taking was in another County. (2) That Process of Outlawry does not lie in this Case on the Defendant's Default, as it does in Replevin. (3) That yet, if he comes in by Process of Outlawry, he shall be forced to Answer. (4) That he may avow for Damage-feasant, notwithstanding the special Cause assigned. *Note*; The Beasts here were driven into the County of *Berks*. *Dyer* 168.

*Note*; The Words (*ut dicitur*) are to be in the Writ when brought by a common Person only, and not when brought by the King. 38 E. 3. 31.

(b) If the Cause be removed by Plea out of the Lord's Court (it seems of ancient Demesne) the Cause is traversable; *contra*, if it be out of the King's Court. 12 H. 4. 12. & 31 E. 3. *Fitz. Cause de remover* 10. and though there be no Cause, yet the Parol shall not be remanded; *contra*, if in ancient Demesne. 12 H. 4. 14. For on a *Recordare* out of ancient Demesne, the Plea arises wholly on the Cause, and therefore the Plaintiff may be Nonsuit in such *Recordare*; but if it be out of any other Court, the Plea arises upon the mere Matter, and therefore the Plaintiff cannot be nonsuited there. *Kelw.* 115.



is sued by the Plaintiff or Defendant shall be directed unto the Sheriff, and the Writ shall be such,

*Rex Vic' Linc' salut', Præcipim' tibi quod assumptis tecum quatuor discretis & legalibus Militibus de Com' tuo, in propria persona tua accedas ad Curiam W. de C. & in illa plena Curia recordari facias Loquelam quæ est in eadem Curia sine Breui nostr' inter, &c. & Record' illud habeas sub Sigillo tuo & sigill' (a) quatuor legal' hominum ejusdem Cur' qui Recordar' illi interfuer'; & partibus, &c. ut supra. Quia præd' A. est Ballivus præd' W. de C. Curie sue præd', & tenet Placita ejusdem Cur' & Judex in sua causa esse non debet.* 10 E. 3. 42.

Another Recordare thus; *Accedas ad Wapentag' nostr' de H. or thus, ad Hundr' nostr' de I. or thus, ad Tithingum nostrum de L. & in pleno Wapentag' illo; or thus, in pleno Hundr' illo; or thus, in pleno Tithingo illo, &c.* And he may shew other Causes as the Case requireth. And if the Recordare be returnable in the Common Pleas, and at the Day of the Return the Sheriff return it \* *tarde*; now the Party that sued that Recordare, shall have a *Sicut alias Recordare* out of the Common Pleas, directed unto the Sheriff, &c. 10 E. 3. 42.

A (b) And if the Plea be discontinued in the County, yet the Plaintiff or Defendant may remove the Plaint into the Common Pleas or King's Bench by Recordare, &c. and it shall be good, and he shall declare upon the same; and the Court shall hold Plea upon the same Plaint; for if the Plaint be (c) continued in the County, and Issue joined upon it, yet nothing shall be removed but only the Plaint; and in the Common Pleas the Plaintiff may declare anew, &c.

B And in a Recordare to remove a Record out of antient Demesne, the Writ shall say, *Loquelam & processum*, and not *Recordum*; *quod vid.* 39 H. 6. by all the Justices; yet the Form of the Register in the Record, as before is said; is, *Et Recordum illud habeas.*

C If a Record be removed out of a Court of Record by a Recordare facias, it cometh in without Warranty, and the (d) Court shall not hold Plea thereof. But if a Record cometh in Court without a Warrant,

*Terminer* shall not be removed by Recordare, by Babington. 1 R. 3. 4. ac. Vid. 5 E. 6. fo. 27. *Ashton cont'*, upon a Fine removed; and 22 H. 6. 7.

Y 2

the

(a) And note; A Record not being received at the *Disfringas Señatores* by Attorney, was afterwards received by the Suitors on a Writ out of Chancery. 29 E. 3. 36.

(b) See accordant 3 H. 6. 30. and the like in a *Pone*. 13 E. 3. *Replevin* 37. 14 E. 3. F. Brief 278.

(c) And therefore if the Defendant be named without any Addition in the Plaint he shall have no Addition in the *Recordari*, though Process of Outlawry lies thereon. 2 H. 5. 6. (30 H. 6. 30. accordant) adjudged. For the Plea here is not held on a

Writ (but a Plaint only) and so not within the Intent of the Statute.

Note; A *Capias* lies on a Default in a *Pone* for the Plaintiff in a *Replevin* by Plaintiff, but not on a Default upon a *Justicies*. 3 H. 6. 54. See 14 H. 6. 21. Yet if a *Withernam* be awarded in a County, the Plaintiff shall gage Deliverance here. And a *Recordari* makes the Court Judge of the whole Matter. 21 H. 6. 40. See 39 H. 6. *Recordari* 5. 20 E. 3. *Recordari* 10, 20.

(d) See 9 H. 6. 58, 59, accordant (sed 34 H. 6. 42, contra) where by a *Recordari* the Record was removed by the Sheriff out of

the Party may sue a Writ, directed unto the Justices, that they proceed upon that Record *quod coram vobis residet*. If the Recordare *facias* bear Date before the Plaint were entred in the County, yet the Record is well removed, because that both Courts are Courts of Record. But if the Record be removed out of the Court of any other Lord by such Writ which beareth Date before the Entry of the Plaint, it is not good.

### Recaption.

47 E 3 7  
R. 11. 1001

A Writ of (a) Recaption lieth where a Man distraineth for Rent, or E Service, or other Things, and afterwards, pendant the Plea, he who distrained doth distrain again for the same Rent or Service, or other Thing, the Beasts of the Party whom he had before distrained upon; then he who is so distrained shall have this Writ, and shall recover Damages for the second Distress taken; and he who took the Distress shall be fined for the Wrong, although the first Distress were lawfully taken, and although that the Rent or Services for which he distraineth were arrear, &c. because by the first Distress he shall have Return of the Things taken, until he hath the Rent or Services for which he distrained. But for Damage-feasant in his Lands, a Man may distrain the Beasts of any Man which he finds upon the Land, during the Damage, so often as he shall find them so doing, because he distraineth them every Time for a new Trespass, and new Wrong done in his Land.

*Tenant quare*

And if the Lord distrain for Rent or Services behind, and afterwards F pendant the Plea, the Lord doth command his Servant to distrain for the same Rent or Service, by Reason whereof the Servant or Bailiff do distrain again; the Tenant shall have a Writ of Recaption against the Lord for the same Distress.

And so it seemeth, if the Lord distrain his Tenant for Rent or Service, and afterwards the Servant or Bailiff do distrain the Tenant again for the same Rent or Service, and the Lord do agree unto that Distress, by joining in Aid prayer of the Servant or Bailiff, the Tenant shall have a Writ of Recaption against the Lord. But if the Lord distrain for Rent

of the Chancellor of Canterbury's Court; but it is there said, that the Court of Cant' might have refused to obey the Writ, for being a Court of Record by Commission, the Plea ought not to be removed by a Recordari, but by a *Corpus cum causa*, or a *Certiorari*. And it was held, that seeing the Plea was held in this Court without Warrant, the whole Proceedings were void, and therefore the Court could not remand it; for the Record was never brought in here, but always remained at Cant' and so all was discontinued. Yet see the Register, page 6, 7. A Recordari on a

foreign Voucher out of Chester. A Recordari was to remove a Plaint in *Curia nostra*, where it was in *Cur' Regina Mar'*; and ruled that the Plaint was not removed. *Trin. 3 Eliz. Mo. 78, 130. See also Nat. Br. 12. 12 H. 4. 13. 7 E. 4. 23. 1 R. 3. 4.*

(a) Note 11 H. 6. 14. If the Plaintiff in a Recaption be Nonsuit, the Defendant shall have a Return (of the Beasts, &c.) and therefore in this Case the Plaintiff's own Counsel alledged Death of the Plaintiff, after the last Continuance, in order to abate the Writ, and so to prevent a Nonsuit. 11 H. 6. 14.



Rent or Service, and afterwards the Lord's Bailiff doth distrain the same Tenant for the same Rent or Service, pending the Plea; the Tenant shall not have a Recaption against the Lord, nor against the Bailiff, although the Bailiff maketh conuſance in the Right of the Lord, &c. For it may be that the Lord had not Notice of that Distress or that the Bailiff had not Notice of that Distress which the Lord took before for the same Rent or Service.

G But it seemeth in that Case the Tenant may have an Action of Trespass against the Bailiff for the second Distress of his Cattle for the same Rent or Service, for which the Lord had distrained before. 10 E. 3. pl. 13.

H But if the Lord do distrain for Rent or Services, and afterwards (pendant the Plea) the Lord do distrain the Cattle of a Stranger for the same Rent, and not his Cattle who was first distrained; he who is so distrained shall not have a Writ of Recaption, nor he who was first distrained. For it behoveth him who shall have this Writ of Recaption, that he have his Cattle first distrained before for the same Cause for which they were distrained the second Time. 12 E. 2. p. 13.

I But if a Man distrain two Mens Cattle for Rent or Service, and afterwards he doth distrain the Cattle of one of them again for the same Rent or Service; now he shall have a Recaption alone in his own Name. 34 E. 2. p. 12.

K And if the Lord distrain the Beasts of a Stranger for Rent or Service, and afterwards (pendant the Plea) the Lord doth distrain the Beasts of the same Stranger for the same Rent or Service; the Stranger shall have a Recaption as well as the Tenant, if the Beasts were taken at two several Times. Post. G.

L And if the Writ of Replevin be abated, then the Writ of Recaption shall abate, as it was judged in the Time of K. E. I.

M And if the Lord do distrain for Rent arrear at a certain Day his Tenant's Cattle, and he sueth a Replevin, &c. and the Lord avow for the Rent, &c. and the Tenant plead (a) *hors de son Fee*; if the Lord (pendant that Plea) distrain for Rent behind at another Day after, the Tenant shall have a Writ of Recaption, because the Lord's Title shall be tried by the first Plea. But otherwise it is, if the Tenant in the first Replevy plead *Riens arreare*, or levied by Distress, then (pendant that Plea) the Lord may distrain for the Rent behind at a Day after, because that the Seigniori is there confessed, and the Tenant shall not have a Recaption (b). [72.]

4

And

(a) In this Case he shall not have Advantage of the Issue *Hors de son Fee*, before that the Issue be tried; and therefore he avers, that the first Taking was (wholly) for the same Rent. 28 E. 3. 29. *per Cur'*; yet see this Point agreed with a Diversity, *per Cur'*. 7 H. 4. 4. and 9 H. 5. 1. *per Hankf.* See also 7 H. 4. 4. 18 E. 2. p. 8.

(b) The Defendant in Replevin, before the Sheriff, avows for Rent, the Plaint is removed by *Pone*, and the Defendant distrains for the same Cause, and a Recaption was brought, though only a Plaint of Record; and it is there agreed, that a Recaption lies before Avowry made. 9 H. 6. 1. 11 H. 6. 8. adjudged. (*Quare* 45 E. 3. 4.)

47 E. 3. 7. And the Tenant or he who is distrained, shall have a Recaption before any Avowry made, and may aver he distrained for the same Cause (a).

47 E. 3. 7.  
9 H. 6. 4. And in a Recaption the Defendant shall not avow, as he shall do in a B Replevin, but shall justify the Taking, &c. as he shall do in an Action of Trespass, for the Plaintiff shall recover Damages only in the Recaption for the (b) Contempt that the Defendant hath done against the Law, and not for the Taking of the Cattle, nor for the Detaining of them. And in a Recaption it is not material whether the first Distress C be of Right or not.

31 E. 3. 5. And if a Plaint be removed out of the County into the Common D Pleas by *Pone* or *Recordare*, and afterwards the Plaint. be Nonsuit in the Common Pleas, before or after an Avowry made, the Lord after this Nonsuit may distrain again for the same Cause, and the Tenant shall not have a Recaption, because there is not any Plea depending; and yet the Plaintiff may sue a Writ of (c) second Deliverance upon the same Record.

And if the Lord distrain the Cattle of the Tenant and a Stranger, E which they have in Common, for Rent or Service, and afterwards (pendant the Plea) the Lord doth distrain the Tenant's Cattle only for the same Cause; the Tenant shall have a Recaption for those Cattle. But if the Lord distrain the Cattle of the Tenant only for Rent, &c. and afterwards (pendant the Plea) the Lord doth distrain the Cattle of the Tenant and a Stranger, which they hold in Common, for the same Cause; it seemeth that the Tenant shall not have Recaption for those Cattle for the Interest of the Stranger. *Quare.*

14 E. 3. Re-  
cap. pl. 7. And if the Lord distrain, and the Tenant sue a Replevin, which is F removed into the Common Pleas, and the Conusance is demanded by the Bailly of the Freehold, and is granted, and afterwards the Bailly fail to do Right unto the Party; if he distrain again for the same Cause, the Tenant shall have a Recaption, because the Lord ought to remove the Plea into the Common Pleas again by Resummons, &c.

Ante. K. And a Recaption lieth where the Lord distraineth other Cattle of the G Tenant than he first distrained, as well as if he had distrained the same Cattle again, if it be for one and the same Cause, as I conceive. And yet in 19 E. 3. the Issue was taken upon the Property of the Cattle, as that they were other Cattle of the Plaintiff, &c.

And a Recaption lieth as well where the Lord distraineth the Tenant again for the same Cause, where the Plea is depending in the County before

(a) And see 28 E. 3. 92. That where the Lord in a Replevin avows for one Cause, and justifies the Recaption for another Cause, the Plaintiff may aver that the first Caption was made by him for the same Cause (as the second). See 45 E. 3. 4. 32 E. 3. p. 5. 9 H. 6. 7.

(b) Note the Defence; viz. *Defendit vim & injuriam quando, &c. & quicquid est in Contemptu Domini Regis & ejus Mandatum.* 29 E. 3. 28.

(c) Note; Second Deliverance does not lie in a Franchise which has Conusance. 38 E. 3. 31.



before the Sheriff, as where the Plea is depending before Justices of Record.

H And if the Plea be depending in the County before the Sheriff, then the Form of the Writ of Recaption is,

*Rex Vic', &c. Monstravit nobis A. quod quum tu Averia sua, quæ B. cepit & injuste detinuit, eid' A. sine Brevi nostro replegiasses, & dedisses diem usque ad prox' Com' tuum, & præd' B. attachiasses ad respond' super præf. A. idem B. post Attachiamen' illud Averia præd' A. iterum cepit ea occasione qua prius ea ceperat, & ea sicut prius detinet. Et quia hoc injustum est & manifeste (a) contra pacem nostram, Tibi præcipimus, quod Averia præd' A. sine dilatione deliberari fac', quousque capitale Placitum inter eos terminet'. Et si invener' quod præd' B. Averia præd' A. iterum ceperit ea occasione qua prius ea ceperat, & ea sicut prius detinet, tunc corpus præf. B. habeas coram te & custodibus Placitorum Coronæ Nostræ ad proximum Com' tuum. Et si per Bullivos tuos, per quos Averia præd' A. replegiat' fuerint, & per alios probos & legal' homines de Com' tuo, convinci poter' de secund' caption' pro una & ead' occasione, tunc ipsum B. ita per misericordiam castiges, quod castigat' illa in casu consimili timor' aliis præbeat delinquendi.*

And if the Plaint be in the County by Writ of Replevin pending before the Sheriff, then the Writ is such :

*Rex Vic' S. salut'. Monstravit nobis A. quod cum ipse Breve nostrum nuper tibi detulisset de Averiiis suis sibi repl', quæ B. cepit & injuste detinet, & Averia illa eid' A. repleg', & eidem dedisses diem usque ad prox' Com' tuum, &c. as in the Writ before. And if the Plaint be removed out of the County by Recordare, then the Form of the Writ of Recaption shall be such :*

*Rex Vic', &c. Monstravit nobis A. quod cum B. Averia præd' A. cepisset & injuste detinisset, & tu ad querimoniam ipsius A. prout mos est Averia illa eid. A. replegiasses, & ei dedisses diem usque ad prox' Com' tuum, & præd' B. attachiasses ad respond' super hoc præf. A. & postmod' tibi preceperimus, quod haberes Recor' Loquelæ præd' coram Justic' nostris apud Westm' tali die prox' præterito ; idem B. pendente Placito coram præf. Justic' Averia præd' A. iterum cepit, &c. ut supra.* 29 E. 3. 28.

And if the Plaint be removed out of the County by a Pone into the Common Pleas, then the Writ of Recaption is such :

*Rex Vic', &c. Monstravit nobis A. quod cum ipse Breve nostr' nuper tibi detulisset de Averiiis suis sibi repleg', quæ B. cepit & injuste detinuit, & Averia illa eid' A. repl', & ei dedisses diem usque ad prox' Com' tuum, & præd' B. attach' ad respond' super hoc præf. A. & postmod' præceperimus Loquel' illam poni coram Justic' nostris apud Westm' tali die prox' præterit' ; idem B. pendente Placito præd' coram iisd' Justic', Averia præd' A. iterum cepit ea occasione qua prius ea ceperat, & ea sicut prius deten' & in contempt' Præcept' nostrorum justiciari non permittit. Et quia hoc injustum est, & manifeste contra pacem nostr' Tibi præcip' quod si præd' A. fecerit te secur' de*

(a) And Note ; The Writ shall be *contra pacem nostram*, altho' against the Lord, but not *Vi & armis*. See 9 H. 6. 1. 31 E. 3. Recapt. 5.

[73] *de clam, suo prosequend', &c. tunc pone per vad', &c. præd' B. quod sit coram Justic' nostris præd', ad respond' nobis de contemptu præd', & præd' A. de transgr' præd' & habeas ibi nomina Pleg' & hoc Breve; & Averia illa eid' A. repleg' facias. Teste, &c.*

If a Man sue a Replevin by Writ, and the Sheriff send unto the A Bailiff of the Liberty to replevy the Cattle, because that the Taking was within the Liberty, and afterwards the Plaint is removed by *Pone* into the Common Pleas, and afterwards the Lord, or the Party who distrained before, distrain again for the same Cause; then he who is so distrained shall have a Writ of Recaption, and the Writ shall be such :

*Rex Vic', &c. Monstravit nobis S. quod cum ipse Breve nostrum nuper tibi detulisset de quodam equo suo sibi repl', quem I. & A. ceperunt & injuste detinuerunt, ac Ballivi Libertat' Abbat' de R. de C. quibus Retorn' Brevis nostri præd' haber' fecisti, equum illum eidem S. replegiassent, & præd' A. & I. attachiassent, ad respondend' super hoc præf. S. & postmod' præceperimus Loquel' illam poni coram Justic' nostris apud Westm' tali die, anno regni nostri tertio; præfati I. & A. pendente placito prædicto coram Ballivis prædicti Abbat' Curia suæ præd' coram quibus Loquela illa, juxta libertates eidem Abbati concessas, per eosd' Justic' retornata est placitand' Averia præd' S. iterum ceperunt, &c. ut supra.*

And if a Lord hath a Hundred or a Wapentake, and hath Power to B hold Plea *de vetito Namio*, &c. and a Man distraineth another there, for which he sueth a Replevin within the Hundred, and pendant the Plea there, the Party who distrained before distrained the same Man again for the same Cause; then he who is so distrained shall have a Writ of Recaption in such Form directed unto the Sheriff.

*Rex Vic', &c. Monstravit nobis A. quod cum B. Averia præd' A. cepisset, & injuste detinisset, ac Ballivi M. de N. ad querimoniam ipsius A. (prout moris est) Averia illa eidem A. replegiassent, ac ei dedissent diem usque ad proxim' Wapentag' prædict' Domini sui de N. & præd' B. attachiassent ad respondend' super hoc præf. A. postmodumque tibi præceperimus, quod assumptis tecum, &c. accederes ad præd' Wapentag', & in pleno Wapentagio, &c. sine Brevi nostro, inter ipsum A. & præf. B. de prædict' Averiiis ipsius A. captis, &c. & Record' illud, &c. idem B. pendente Placito, &c. ea occasione qua prius, &c. poni, &c. as before in the Writ of Recaption.*

And now it appeareth by these Writs of Recaption, that if a Man C be distrained, and he sue a Replevin by Plaint before the Sheriff in the County, and afterwards hanging that Plaint, he is distrained again for the same Cause, that he shall have a Writ of Recaption, which shall be directed to the Sheriff, and the Sheriff shall hold Plea upon that Writ of Recaption.

But if a Man be distrained within any Liberty, and he sue a Replevin there by Plaint, or by Writ, and pendant that Plaint in the Liberty he be distrained again for the same Cause, by the Person who distrained before; he shall not have upon that Distress a Writ of Recaption, because the Plaint is not pendent before the Sheriff, nor before the Justices, and the King will not direct the Writ of Recaption but unto the



the Sheriff. But if the Plaint were removed by *Pone* or *Recordare* out of the Liberty before the Justices, then the Party who was distrained shall have Recaption, as well for the Distress which was before the Writ of *Pone* or *Recordare*, as if the Re-taking had been after the *Pone* or *Recordare* sued forth.

- D And if a Man be convicted before the Sheriff in a Writ of Recaption, &c. he shall be amerced, and render Damages unto the Party for the Contempt. But if he be convicted before the Justices in a Writ of Recaption, he shall be fined, and not amerced, and also shall render Damages unto the Party for the Contempt. 39 E. 3. 36.

### Writ de Withernam.

- E THIS Writ lieth where a Man taketh the (a) Cattle or Goods of another Man, and the Party sueth a Replevin by Writ, and an *Alias* and *Pluries*, and upon the *Pluries* the Sheriff doth return, that the Cattle or Goods, &c. are esloined, &c. by Reason whereof he could not replevy them, &c. then this Writ of Withernam shall issue (b) out of that Court where the *Pluries* is returned, returnable in the King's Bench (b) or Common Pleas: And the Form of the Writ is such: See 2 Salk. 581, &c. 2 Shower 221 to 230. Farfl. 9, 17. Raym. Ant. 63.

- F *Rex Vic' Linc' sal'. Quum pluries tibi præceperimus quod juste, &c. A. Averia sua quæ B. &c. vel causam, &c. quare mandatum nostrum pluries tibi inde directum exequi noluisti, vel non potuisti; ac tu nobis significaveris, quod postquam præd' B. Averia præd' A. cepit, & in Com' tuo ea fugavit de Com' præd' in Com' B. per quod ea eidem A. replegiar' non potuisti: Nos, malitiæ ipsius B. obviare volentes in hac parte, tibi præcipimus, quod Averia præd' B. in Balliva tua cap' in Withernam, & ea detineas, (c) donec eid' A. Averia sua præd' secundum Legem & consuetudinem Regni nostri repl' possis, juxta tenorem mandator' nostror' præd' prius tibi, &c.*

- G And in the Writ of *Withernam* he ought to rehearse the Cause which the Sheriff returneth for which he cannot replevy them: As to fay,

*Ac postquam præd' B. Catalla vel Averia illa cepit, Catall' vel Averia illa, aut Bov' vel Equum illum elongavit extra Ballivam tuam, ita quod nullam deliberation' inde eid' A. facere potuisti, sicut nobis significasti;*  
Z Nos,

(a) Note; It lies not on a Suggestion only, that the Beasts are Esloined. 11 H. 6. 1. per Cotton.

(b) But not out of Chancery. M. 42, 43. Eliz. inter Grindal and Poundal, in C. B. And yet if *Elongata* be returned on the *Alias*, &c. into Chancery, then the *Withernam*, shall issue out of Chancery. 22 H. 6. 21. per Brown.

(c) It seems the Defendant shall have a Day in this Writ, (if he comes in) by Attachment, but not otherwise. See 7 H. 4. 27. 43 E. 3. 26. 35 H. 6. 47. as if *Elonga-*

*ta* be returned on the *Pluries* Replevin, then there is this Clause inserted in this Writ. *Et si the Plaintiff fecerit, &c. tunc pone the Defendant, &c. ad respondend' tam Domino Reg de contemptu quam prefato Querenti de captione & injusta detentione Catallorum prædictor'. 2 Eliz. 180.* For it seems there had not been any such Clause in the *Withernam*, if it had been on a Plaint in the County. Vide ibid. & 44. Aff. 15. But then the whole ought to be removed by the *Pone*, and a Special Return thereof, viz. *Quod nullum aliud Breve est, &c.*

Nos, &c. tibi præcipimus, quod Catall' vel Averia, &c. as the Case is, in Balliva tua ad valentiam Catall', &c. præd' A. sine dilacione cap' in Withernam, & ea detineas, donec eidem A. &c.

[74.]  
Ann. 69.

And there are very many Causes that the Sheriff may return upon the *Pluries*, wherefore he cannot Replevy them, whereof divers of them do appear in the Register, which a Man may there see.

And if the Sheriff do return upon the *Pluries repleg'* that he hath sent unto the Bailiff of the Liberty who hath Return of Writs, &c. and that the Bailiff hath given Answer, that he cannot execute the Writ, because he cannot have a View of the Cattle or Goods which were taken; then the Court in which such Return is made shall award a Writ of *Withernam* directed unto the Sheriff, and the Sheriff shall thereupon make his Precept unto the Bailiff of the Liberty; and if the Bailiff of the Liberty doth not make a Return thereof unto the Sheriff, then the Sheriff shall return the whole Matter in Court, and thereupon the Court shall award a Writ of (a) *Withernam*, and a *Non omittas* with the same: And the Form of the Writ shall be such:

Rex Vic' B. salut'. Cum plur', &c. [usque ibi, vel non potuisti] ac R. de C. Ball' Libertatis S. Walrici, cui Retorn' Brevis nostri habere fecisti, tibi responderit, quod Executionem Brevis illius facere non potuit, eo quod visum Averiorum præd' habere non potuit, sicut tu nobis significasti; per quod tibi præceperimus, quod Averia præd' B. in Ball' tua sine dilat' caperes in Withern' & ea detineres, donec eidem A. Averia sua, &c. inde direct', vel causam nobis signif. &c. vel tu non potuisti; ac tu nobis retornaveris, quod idem R. Ball' Libertatis præd', cui Retorn', &c. habere fecisti, null' tibi inde dedit respons'. Tibi præcipimus, quod non omittas propt' Libertatem præd', quin eam ingrediar', &c. cap' in Withern' donec, &c. juxta, &c. prius tibi, &c. Tesse, &c. And

(a) See 11 H. 4. 10. In Replevin a *Withernam* was awarded against the Defendant, after which the Defendant claims Property, and thereon Issue taken, the Plaintiff gages Deliverance, and a Writ issues to make Deliverance; the Sheriff returns *Elongata*, and so a *Withernam* was awarded against the Plaintiff, and on *Nihil* returned, a *Capias* issued; then the Issue is found for the Plaintiff, on which he has Judgment; and then on a *Pluries* returned, the Defendant prayed, and had an Exigent against the Plaintiff; and by *Tyrwhit*, the Defendant shall recover Damages against the Plaintiff for this Detainer. *Quære* 1 Co. 75.

Note; The Writ of *Withernam* is ad respond' Domino Regi de Contempt' & parti de Damno & injur'. R. Entr. 701. See 35 H. 6. 47. *Danby* and *Moyle*. The Defendant shall recover Damages in *Withernam*, on *Elongata* returned, in a Writ de Return' habend'; but others contra. See *Dyer* 41. If the Plaintiff be Nonsuit, he may have a second Deliverance *instante*, and it shall be

a *Supersedeas* to the Retorn' habend', and if a Retorn' habend' be sued after a second Deliverance granted, the Sheriff ought not to execute the second Deliverance. Note; This prevents the Mischief of a *Withernam* against the Plaintiff.

N. B. A. brings Replevin against B. and has Deliverance, and is afterwards Nonsuited, and a return awarded, and because an *Elongata* was returned, B. had the Beasts of A. in *Withernam*; in this Case tho' the Plea was in the County, the Replevin is made in C. B. and the second Deliverance shall not be of the Beasts delivered in *Withernam*, but of those that were first taken; and the Defendant shall be forced to gage Deliverance of those taken in *Withernam*, (quod Nota,) and yet the Plaintiff himself is possessed of the Beasts for which he complained, and if he makes his Plaint or Count of the Beasts delivered in *Withernam*, it is not good. 25 E. 3. 47. 33 E. 3. *Avowry* 256. and 13 E. 3. Replev. 37. per Cur'. See also *Dyer* 59. accord. per Cur' in a second Deliverance.



**B** And if a Man distrain any Man's Cattle, and he sue a Replevin by Plaint made unto the Sheriff, for which the Sheriff makes a Precept unto the Bailiff to replevy them, and the Bailiff return at the next County, that he cannot replevy the Cattle, because they are esloined, or that he cannot have View of the Cattle; then the Sheriff in the same County-Court ought to make Enquiry if it be true which is returned, and if it be found so by the Jury, then the Sheriff *ex Officio* shall make a Precept unto his Bailiffs in the Nature of a *Withernam*, to take as many Cattle of the other Party: And if the Sheriff make such Precept to take the others Cattle in *Withernam*, and the Bailiff will not execute the Writ, then the Party may have a Special Writ out of the Chancery, directed unto the Sheriff, commanding him to do *Withernam*, and to do Execution of the first Judgment: And the Writ shall be such:

*Rex Vic', &c. Monstr' nobis A. quod cum B. & C. Averia præd' A. cepis. & injuste detinuiss. idemque A. coram te prosecutus fuisset pro Averii præd' sibi secund' Legem & consuetud' regni nostri replegiand', ac licet per I. Ball' tuum, quem ad Averia præd' de dict' A. repleg' misisti, testatum fuerit, & per inquisitionem (prout moris est,) in plen' Com' tuo fact' comperit, quod idem Ball' visum de eisd' Averiiis habere non potuit, ad eadem præf. A. replegiand', per quod in pleno Com' tuo consideratum fuit, quod Averia præd' B. & C. in Balliva tua caperentur in Withernam, & detinerentur, quousque eidem A. Averia sua præd' secund' Legem & consuetud' Regni nostri replegiar' possint; idem tamen A. Execution' considerationis præd' nondum affectus est, ad damnu' ipsius A. non modicum & gravamen; & quia præf. A. subvenire volumus in hac parte, tibi præcipimus, quod si ita sit, Averia præd' B. & C. cap' in Withernam, & ea detineas quousque eidem A. Averia (a) sua præd' repl' possis secundum Legem & consuetud' regni nostri, & juxta considerationem præd', &c.*

**C** And by that it appeareth, that the Sheriff may award *Withernam*, or Replevin sued by Plaint, if it be found by Enquest in the County that the Cattle are esloined according to the Bailys Return, &c. But upon 9 E. 4. 49. the *Withernam* awarded in the County, if the Bailly do return that the other Party hath not any Thing, &c. he shall have an *Alias* and a *Pluries*, and so infinite, and hath no other Remedy there.

**D** But upon a *Withernam* returned in the King's Bench or Common 20 E. 4. 11. Pleas, if the Sheriff do return that the Party hath (b) not any Thing, &c. there a *Capias* shall be awarded against him, and Exigent, and process of Utlagary.

In a Replevin sued by Writ, at the *Pluries* returnable the Sheriff doth return, *quod averia elongata sunt*, &c. Now if the Defendant appear, the Plaintiff shall not have a *Withernam*, because the Defendant may gage Deliverance. And if the Defendant's Cattle be taken in

Z 2

*Withernam,*

(a) Vide ante 69. 2 H. 4. 9. 22 H. 6. 40. 9 E. 4. 8. 16 H. 7. 2.

(b) See 28 E. 3. 51. and a *Siout alia* there granted.

*Withernam*, they shall (a) not be delivered to the Plaintiff, but the Sheriff shall keep them *quousque*, &c. and the same appeareth by the Words of the Writ: But it is said, that it is the Usage in the King's Bench, that they shall be delivered unto the Plaintiff; by which it seemeth, that the Form of the Writ of *Withernam* there is in another Manner than it is in the Register.

Note the last Case, 13 H. 7. the Defendant at the Exigent after the *Withernam*.

(b) In a Replevin, at the *Pluries* returnable the Sheriff doth return, E *quod Averia elongata sunt*, &c. and the Defendant doth appear, and pleadeth that he did not distrain them: Now the Plaintiff shall not have *Withernam*. And so if the Defendant at the *Pluries* returned appear, and plead that the Cattle are dead, in the Default of the Plaintiff, the Plaintiff shall not have *Withernam*. *Bro. Vouch. cap. 7.*

And the Defendant in some Cases shall have a *Withernam* against the F Plaintiff: As if the Defendant hath a Return awarded for him, and he sueth a Writ de *Retorno habendo*, and the Sheriff return upon the *Pluries*, *quod Averia elongata sunt*, &c. he shall have a *Scire facias* against the Pledges, &c. according unto the Statute of *West. 2.* and if they have nothing, then he shall have *Withernam* against the Plaintiff of the Plaintiff's Cattle. *Quod vide Tr. 7. R. 2. (c)*

### Moderata Misericordia.

[75.]  
14 H. 4. 4.

THE Writ of *Moderata* (d) *Misericordia* lieth in Case where a Man is amerced in a Court-Baron, or other Court which is not a Court of A Record, outrageously for Trespass or other Offence; then he may sue this Writ directed unto the Lord of the Court or unto his Bailies, com-

(a) See the like Diversity, 2 H. 4. 9. Yet *Quere R. Entr. 702.* and 704. that the Clause of the *Withernam*, whether for the Plaintiff, or the Defendant, is *Quod Vic' capiat in Withernam, &c. & ea prefato A. deliberare, &c. detinend' quousque, &c.* See for this, 25 E. 3. 4. 7. but more fully in Gage Deliverance 8. where the Sheriff in his County levied Goods of the Plaintiff in *Withernam*, after a Return by him awarded; on a Nonsuit, if he does not deliver them to the Defendant, the Plaintiff shall have an Action against the Sheriff. See 1 Co. 75. b. in his Entry of *Breedon's Case* accordant.

(b) Note; If in a Replevin, a *Withernam* be awarded, and afterwards the Defendant avows the Taking as his own Goods, or for Heriot, or denies the Caption, the Plaintiff shall gage Deliverance of the *Withernam*, but the Defendant shall not gage Deliverance of the Goods taken, and yet the Defendant might have come in *Pais* and

claimed Property. 30 E. 3. 9. acc. So if *Withernam* be taken, and after Defendant comes into Court, and makes Conu'ance as Bailly to I. S. and prays Aid of him who joins in Aid, the Defendant shall have Deliverance of the Beasts in *Withernam*; for it belongs to the Lord to make this Deliverance of the Beasts in *Withernam*, and not to his Bailly, per *Horton. 7 H. 4. 28.*

(c) See 5 H. 5. 7. by *Hull*, the Avowant may have *Withernam* notwithstanding, for it was at Common Law. N. B. 7 R. 2.— That it lay not before a *Scire facias* returned. See 9 H. 6. 42. a *Scire facias* against Pledges in an Attachment against the Party, and for Default at the *Districgas* Process of Outlawry issued. See 9 H. 6. 42. 5 H. 4. 71. 13. H. 7. 2.

(d) See *Rot. Claus. 38 H. 3. M. 7. A* Writ to the Sheriff, *De non permittendo ad Distringend' pro Misericordia contra Tenorem Mag' Chartæ.*



commanding them, that they moderately amerce the Party according unto the Quantity of the Trespafs, &c. And this Writ is founded upon the Statute of *Magna Charta. cap. 14. Quod nullus liber homo amercietur nisi secundum quantitatem delicti, &c.* And the Procefs upon this Writ is *Alias* and *Pluries*, and Attachment, and the Attachment shall be awarded against him against whom the original Writ was sued; and the Form of the Writ is such:

**B** *Rex Ball' I. de S. salutem. Monstravit nobis C. quod cum ipse nuper amerciatuſ eſſet in Cur' præd' domini veſtr' de I. pro modico delicto, in quod incidit, vos ab eo gravem exigitis redemptionem, contra tenorem Magnæ Chartæ de Libertatibus Angliæ, in qua continetur, Quod nullus liber homo amercietur niſi ſecund' quantitatem delicti, & hoc ſalvo Contenemento ſuo, & Villaniſ ſalvo Wainagio: Et ideo vobis præcipimus quod a præſ. C. moderatam capiatis Miſericordiam, ſecundum quantitatem delicti illius, ne clamor ad nos veniat inde iteratus Teſte, &c.*

And the Attachment ſhall be always directed unto the Sheriff, and the Writ ſhall be ſuch:

*Rex Vic', &c. Si A. fecerit, &c. tunc ſum' B. & C. Ball' D de I. quod ſint coram juſtic' noſtris apud Weſtm', &c. oſtenſ. quare, cum idem A. nuper amerciandus eſſet in Hundred' vel Cur' dicti dom' ſui de I. pro modico delicto, in quod incidit; & nos ad requiſition' ipſius A. præſ. Ball' præcepimus, quod juxta tenor' Magn' Char' de Libertatibus Ang' moderatam ab eo caperent Miſericord', ſecund' quantitatem & modum delicti illius; iidem Ballivi, ſpretis mandatis noſtr' præd', præſ. A. gravioſem inde redemption' per varias diſtriſciones torquere non ceſſarunt, in noſtri contempt', & ipſius A. grave dampnum, & contra tenorem Char' præd' ut dicitur. Et habeas ibi ſum', &c. Teſte, &c.*

**C** And if a Man be amerced in a Court-Baron, where he did not any Trespafs, but it is ſo preſented by the Enqueſt, &c. yet it ſeemeth he ſhall not have this Writ, if the Amercement be not outrageous: But if the Steward of his own head will amerce any Tenant or other Party without Cauſe, I conceive the Party ſhall have an Action of Trespafs, if he be diſtrained for that Amercement, and the Party ought not for to ſue his Writ of *Moderata Miſericordia*.

**D** If a Feme covert be amerced for Trespafs, &c. if the Husband be diſtrained for the ſame, he ſhall have this Writ, if the Amercement be outrageous.

**E** But what ſhall be ſaid moderate Amercement, and what not, appeareth by the Words of the ſaid Statute, which ſaith *Secundum quantitatem delicti*. By which it ſeemeth that if it exceed the Value of the Trespafs, it is not a moderate Amercement; and that ſhall be intended for the Value of the Trespafs which is done unto the Lord, and not to him who ſhall have the Amercement: For if one Tenant do Trespafs unto another Tenant, he ſhall be therefore amerced in the Lord's Court by Preſentment of the Trespafs; but that Amercement ſhall not be unto the Value of the Damages which is done unto the Tenant, but having Regard unto the Wrong and Offence done unto the Lord for the Wrongs done unto his Tenant.

And if a Man be Nonfuit in a Court-Baron, he shall be amerced; **F** and if it be outrageous, he shall have this Writ of *Moderata Misericordia*: And so shall the Defendant if he be amerced in any Suit brought against him, because it is found against him; or that he makes Default to wage his Law at the Day given him in any Plaint sued against him, &c. And if the Amercement be not moderate, he shall have this Writ of *Moderata Misericordia*, &c.

Post. 76. D.  
Kitchen 44.

In a Court-Baron if two be amerced for one Trespass outrageously, **G** they shall not join in a *Moderata Misericordia*, for they shall be severally amerced, although the Trespasses be jointly done. And so is it in a Plaint sued by two, if they be Nonfuit, the Amercements shall be several, and they shall not join in *Moderata Misericordia*; yet if an Amercement be set jointly upon them, then they shall join in the Writ. But it seemeth this Amercement ought to be assented by Persons certain, when they are amerced for any Trespasses. And if the Amercement which is set be assented by his Peers, then this Writ of *Moderata Misericordia* doth not lie; for then it is according unto the Statute of *Mag' Chart'*, *quod vid. 10 E. 2.* in Title of Actions upon the Statute in the Abridgment.

And it is called *Misericordia*, in English *Mercy*, for the Smallness **H** thereof, by which it seemeth it ought to be less than the Offence: And then it seemeth they shall be severally amerced for a joint Offence, because one shall not be charged for the Offence of another; but they shall equally bear the Charge, and pay the Sum assessed.

10 H. 6. 7.  
7 H. 6. 12.

And in the Common Pleas, the Course is, when there are divers **I** Defendants, to make several Estreats of the Amercements, and to deliver them unto the Clerk of the Assise, and he shall deliver them unto the Coroners, and they use to *assere* the Amercements severally.

And if divers Demandants be amerced in a real Action for their Non- **K** suit, they make the Estreats severally upon them, and deliver them as before unto the Clerk of the Assise, who delivereth them over unto the Coroners to *assere* the Amercements.

[76.]

But in a personal Action in the Common Pleas, where there are many Plaintiffs named, and they amerced, the Clerk hath forgotten, and cannot shew how the Usage hath been to make the Estreats against them; but it seemeth with Reason, that all shall be done in one Manner. For it cannot properly be said that a Man hath Mercy shewed and offered unto him if he shall pay, or shall be put to more Charge for the Offence of another Person, which himself hath not done: For the Nature of the word (Mercy) is, that a Man shall not be punished so much as he hath deserved. By which it appeareth, that every Amercement shall be or ought to be severally assessed upon every one for his own Offence, and that to a lesser Sum than he deserveth to pay. *Quere* the Usage and Manner thereof in the Common Pleas, and look the Statute of *West. 1. cap. 18.* by the Equity of which Statute the Usage is accrued, and doth continue in the Common Pleas and King's Bench, and before the Justices of Assise; and the Clerk of the

7 H. 6. 12.

Warrants



Warrants in the Common Pleas doth make the Estreats, and doth deliver them unto the Clerks of the Assise, to deliver them unto the Coroners to *assere* the Amercements, and the Coroners do assess the Amercements, and deliver them unto the Clerks of the Assises, and they deliver them back unto the Clerk of the Warrants, who maketh the Estreats: And then one of the Justices of the Common Pleas, or the Clerk of the Warrants, goeth with the Rolls of the Estreats into the Exchequer, and there puts them before the Barons of the Exchequer. And the Form of the Estreat is such:

**A** Staff. *De Henr' Hart & Will' Maner', quia non habuerunt Johannem Brok nuper de B. in Com' præd' Teom', quoniam manuceperunt, &c. De Johanne N. pro se & Pleg' suis, quia non est prosecutus Breve suum versus N. H. de K. in Com' præd' Husbandman in Placito Debiti, &c. De Stephano White, pro falso clam' suo versus D. de, &c. in Placito Detentionis, &c.* And so the Estreat doth rehearse the Cause for which he was amerced, &c. For the Justices do not assess any Sum for any Amercement upon any Person, but make their Entry as abovesaid; and then the Coroners do set the Sum upon the Heads of every of them; as upon every one of them 4 s. or 6 s. as they shall think fit in their Discretions, *viz.* severally upon every of them.

**B** And by the Statute of *Magna Charta, cap. 14.* no Spiritual Person shall be amerced according to his Spiritual Benefice, but according unto his Lay-fee, and according unto the Quantity of the Trespass; and if he be otherwise amerced, he shall have a Writ upon the said Statute against the Sheriff, or him who amerced him. And the Writ shall be such:

*Rex Vic', &c. Quum in Magn' Charta de libertat' Angl' continetur, Quod nulla Ecclesiastica person' amerc' secundum quantitatem Benefic' sui Ecclesiastici, sed secundum Laicum Feod' suum; ac jam ex querela S. Person', &c. accepimus, quod licet ipse nullum Laicum Feod' teneat, tu tamen ipsum S. in Turno tuo, in Hundredo tali, super aliquibus coram te in eodem Turn' præsentat', ipso S. super his non summonito, nec legitime convicto, pro voluntate tua graviter amerciasti, & Amerciamentum illud de bonis suis Ecclesiasticis levare intendis minus juste, in ipsius S. dampnum non modicum, & contra tenor' Chartæ prædict': Nos nolentes ipsum S. in hac parte prægravari, tibi præcipimus, quod si ita est, tunc ipsum S. coram te taliter amerciar', seu Amerciament' aliquod de bonis suis Ecclesiasticis levare non fac', contr' tenorem Chartæ supradict'; & Distinction', si quam, &c. Teste, &c.*

**C** And upon this he may sue an *Alias* and *Pluries*, and *Attach.* unless the Sheriff do according to the Writ directed unto him.

**D** And it seemeth that the Party may sue a Writ upon the Statute by *Ant. 75.* a *Pone*, &c. if he will, against the Sheriff or the other who amerced *Kitch. 43.* him, because that the Statute is a (a) Prohibition in it self, and need  
not

(a) And therefore 'tis no Plea to say, *asscered per Pares*, this Writ does not lie. that no Prohibition was delivered to him. See there the Writ brought against the And Note; If the Amercements be afterwards *Baily. 18 E. 2. accordant, Sur le Stat. 34.*

not sue such a Writ as aforesaid. And by the Statute of *Magna Charta* every Amercement in a Court-Baron ought to be assessed by two Tenants of the Manor upon Oath. And if the Steward or Bailly will assess any Amercement without Assessment, then he who is amerced shall have such Writ :

*Rex Ballivis Episc' W. de S. Salut'. Quum in Magna Charta de Libertat' Angl' contineatur, Quod nullus liber homo amercietur pro parvo delicto nisi secundum modum ipsius delicti, & pro magno delicto secund' magnitudinem delicti, salvo Contenemento suo, & Mercator eodem modo salva Merchandise sua, & Villanus alterius quam nostri eodem modo amerciet' salvo Wainagio suo, si incider' in manum nostram, & nulla Misericordiar' præd' ponat' nisi per sacrament' proborum & legalium hominum de visu', prout in eadem Charta plenius continetur ; ac jam ex querela hominum & Tenentium Manerii præd' acceperimus quod vos ipsos homines & Tenentes, cum in Cur' ejusdem Manerii in Misericordiam inciderint pro aliquo debi't, ad magnas pecuniar' summas voluntarie assidentis, non permittentes quod misericordia illa per sacrament' hominum & Tenentium ejusdem Manerii ponatur, in ipsorum homin' & Tenentium dampnum non modicum, & contra tenorem Chartæ præd' : Nos, volentes Chartam ill' in omnibus & singulis suis articulis inviolabiliter observari, vobis præcipimus, quod ab hujusmodi summis super homin' & Tenent' præd' quum in misericordia inciderint voluntarie assident' penitus desistentes, Misericordiam hujusmodi per sacramentum proborum & legalium hominum ejusdem Cur' poni peremittatis, juxta tenorem Chartæ præd'. Tese, &c.*

[ 77. ]

And he may sue an *Alias* and a *Pluries* thereupon, *vel causam nobis significes*, and afterwards an Attachment against the Bailies, or him who assessed the Amercement.

### *Writ de Nativo habendo.*

THE Writ (a) *de Nativo habendo* lieth for the Lord who claimeth the Inheritance in any Villain, when his Villain is run from him, and is remaining within any Place out of the Manor unto which he is Regardant, or when he departeth from his Lord against the Lord's Will : And the Writ shall be directed unto the Sheriff ; and if the Sheriff will (b) not serve the Writ, he shall have an *Alias* and a *Pluries*, and Attachment against the Sheriff, if need be.

But

(a) And Note ; In a Writ of Neif, the Plaintiff sued by Attorney ; he had enfranchised the Villain in 26 E. 3. 76.

(b) See if the *Pluries* determines the Power of the Sheriff in this Writ also, as in Replevin, 'twas much doubted but it seemed it should ; and if the *Pluries* be returned in B. R. they may hold Plea there. 11 H. 4. 49. It seemed also, that if on the first Writ the Sheriff sent to the Bailly of

the Franchise, who does nothing (or gives no Answer, the Sheriff cannot return this, but ought to execute the Writ himself.

See 7 H. 6. 31. on a *Nativo habendo* removed out of the County by Pone, whereon the Sheriff had returned *Non inventus*, a *Capias* lies, and on *Non inventus* returned thereon, a *Latent* went to the Sheriffs of London.



**B** But if a Man have an Estate but for Term of Life, or for Years in a Villain, it seemeth he shall not have this Writ of *Nativo habendo*, because this Writ is in the Nature of a Writ of Right for to recover the Inheritance in the Villain, and the same appeareth by the Count in the Writ. *Quere tamen*.

Vid. 1 & 2  
Eliz. Dyer  
173. Where  
this Writ  
lieth, and  
out of what  
Court.  
And Vid.  
1 E. 4. 8. 9.  
a good Case.  
7 H. 4. 45.

**C** And the Sheriff may seise the Villain, and deliver him unto his Lord, if the Villain confesse unto the Sheriff that (a) he is his Villain; but if the Villain say to the Sheriff, that he is Frank, then it seemeth that the Sheriff ought not to seise him: As it is in a *Replevin*, if the Defendant claim Property, the Sheriff cannot replevy the Cattle, but the Party ought to sue a Writ of *proprietary probanda*: And so if the Villain say that he is a Free-Man, &c. then the Sheriff ought not to seise him, but then the Lord ought to sue a *Pone* to remove the Plea before the Justices in the Common Pleas, or before the Justices in Eyre. But if the Villain purchase a Writ of *Libertate probanda* before the Lord hath sued the *Pone* to remove the Plea before the Justices, then that Writ of *Libertate probanda* is a *Supersedeas* unto the Lord, that he proceed not upon the Writ of *Nativo habendo* till the Eyre of the Justices, or till the Day the Plea be adjourned before the Justices, and that the Lord ought not to seise the Villain in the mean Time. But at this Day the Writ of *Libertate probanda* is of little Effect, because by the Statute of 25 E. 3. cap. 18. the Lord may seise his Villain and alledge Villainage in an Action brought against him by the Villain, although he hath a Writ of *libertate probanda* depending, which is adjourned before the Justices in Banco, or the Justices in Eyre.

**D** And if the Lord sue a *Nativo habendo*, and the Villain purchase this Writ of *Libertate probanda*, by that the Sheriff shall not proceed farther in

A a

(a) If on a Plaint in Replevin (as 29 E. 3. Replevin 35.) or on a Writ of Replevin, the Defendant claims Property, and it is received by the Sheriff (as 30 E. 3. 22. 31 E. 3. *propr' proband'* 4. as it seems for taking Issues received by the Sheriff) a *propr' probanda* shall issue, altho' the Sheriff cannot make Replevin, and Day shall be given to the Defendant in Bank to answer to the King for the Contempt, and to the Party for the Damages on the Claim; yet it seems the Replevin shall continue to answer Damages to the Plaintiff for the Taking. 1 E. 4. 9. b. 7 H. 4. 28. 46. 21 E. 4. 76. But if it be found for the Defendant, it seems that all is determined, and the Plaintiff cannot have a new Replevin, for the Sheriff cannot execute it, but he may have a Writ of Trespass. 31 H. 6. *propr' proband'* 5. 31 E. 3. *it.* 3. or else he may remove the Plaint in the County by *Recordari*, (tho' in Truth it is determined there, by the Claim of Property, &c.) and so try the Property *de novo*, and the Plaintiff shall not be estopped by the Trial in

the *probr' proband'*, which is only an Enquest of Office. 30 E. 3. 21, 22. 31 E. 3. Replevin 35.

And Note; If the Property be found for the Plaintiff, and at the Day of the Return, the Sheriff returns an Esloinment, and the Defendant makes Default, a *Withernam* shall be granted, and so a *Capias Pluries* and Exigent. 39 E. 3. 30. But some held that the Plaintiff in that Case shall recover the whole in Damages. See 7 H. 4. 28. per *Hull*, when the Defendant comes in by Attachment after Property found for the Plaintiff, the Plaintiff may have two Counts against him, one on the *probr' probanda*, and another on the Replevin. 7 H. 4. 46. If the Replevin be returnable in Chancery, *sicut alias vel Clausam*, &c. And the Claim of Property returned thereon, then the *probr' probanda* shall issue out of the Chancery; but if on the *Pluries*, the Claim is returned in B. R. or C. B. the *Proprietary probanda* shall issue from those Courts. Dyer 173.

in the Writ of *Nativo habendo*, but the whole Plea shall be adjourned before the Justices in Eyre; and then the Writ of *Nativo habendo* and the Record shall be sent before the Justices in Eyre, and the Lord shall declare thereupon, and the Villain shall make his Defence, and Plead thereunto; and the Villain shall not declare upon the Writ de *Libertate probanda*, nor any Thing shall be done thereupon; for that Writ is but a *Superfedeas* to surcease for the Time, and to adjourn the Record and the Writ of *Nativo habendo* before the Justices in Eyre: And that appeareth by the Forms of the Writs of *Nativo habendo*, and of *Libertate probanda*, which are such:

Post. 79. A. Rex Vic' salut'. Præcipim' tibi, quod iuste & sine dilatione fac' haber' E A. de C. B. Nativum & fugitivum suum, omnib' catallis suis, & tota sequela sua, ubicunque inventus fuerit in balliva tua, nisi sit in (a) Domin' nostro, qui fugit de terra sua post Coronat' Dom' H. Reg', filii Regis Johanh'; & prohibem' super forisfact' nostr' ne quis cum injuste detineat. Teste, &c.

The Form of the *Libertate probanda* is such:

### *Libertate probanda.*

R EX Vic', &c. Monstraverunt nobis A. & B. soror ejus, quod cum ipsæ liberae homines sint, & parat' libertatem suam probare, F. clamans eas nativas suas, vexat eas injuste: Et ideo tibi præcipim', quod si præd' A. & B. fecerint te secur' de libertate sua probanda, tunc ponas Loquelam illam coram Justic' nostris ad primas Assisas, cum in partes illas venerint, quia hujusmodi probatio non pertinet ad te capiend'; & interim eisd' A. & B. pacem inde habere fac', & dic' præd' F. quod tunc sit ibi, Loquelam suam versus præfat' A. & B. inde prosecutur', si voluerit. Et habeas ibi hoc Breve. Teste, &c.

31 H. 4. 48. And now by these two Writs it appeareth, that the Lord who sueth Gascoign ac. the Writ de *Nativo habendo*, shall pursue his (b) Complaint upon the Writ of

(a) In a *Latitat* to the Sheriff of London, on a *Nativo habendo* removed hither by Pone, the Sheriff returns *Quod Civit' Lond' est antiquiss' Civit' Camera Regis, Antiquum Dominicum Regis, & consuetudinem habet & habuit a tempore quo, &c. Quod si aliquis senilis Conditionis manserit in Civitate per unum Annum & unum Diem quod ex tunc non erit capt' Virtute Brevis de Nativo habendo.* And 'twas moved, that the Sheriff should be amerced. 1. For that by the Record of Domesday, it appears, that it is not ancient Demean. 2. For that this Custom of London is against Common Right, and prejudicial both to Citizens and Strangers, and therefore void. 3. That it is a Custom in the Negative, and so does not lie in Usage. 4. Tho' the Custom were good, yet it should not come in by the Sheriffs Return, but by Plea. But it is otherwise of An-

tient Demean, because there the Writ warrants such a Return, &c. See 7 H. 6. 32. and the Residue thereof. 8 H. 6. 3. 4.

(b) See accord. by Lodd. for the Sheriff has nothing to adjourn in Eyre; but by Rolph, if the Lord do purchase a *Nativo habendo*, and after that a Pone, and then a *Libertate probanda*, and deliver it to the Sheriff, and is afterwards Nonsuit, and then purchases a new Writ of *Nativo habendo*, the Sheriff may adjourn it for (Trial of) the *Libertate probanda*. 11 H. 4. 49. *Quere.*

If in a *Libertate probanda*, the Parties are at Issue on the Franchise and Villainage, if pending the Issue, the Defendant seizes the Plaintiff, he shall be fined; *contra*, in Trespas for a Villain, and the Lord, pending the Issue, seizes his Goods. 9 H. 5. 1. b.



of *Nativo habendo*, and shall declare thereupon, &c. and that the Villain shall make Defence, and upon that Writ *de Nativo habendo*, the Freedom shall be tried. And also it seemeth by these Writs, that a Writ *de Libertate probanda* doth not lie, if not upon a Writ *de Nativo habendo* sued out before by the Lord.

H But it appeareth in 12 H. 3. *Itin' North'* that the Villain sued a *Libertate probanda*, & *obtulit se* at the fourth Day against the Lord, and he did not appear, but made Default, for which, upon the Default of the Lord, the Villain was enfranchised; and he had Writ unto the Sheriff, that he do not suffer the Lord to trouble him after: *Quod vide* in Title Villainage in the Abridgment; and *vide* 47 H. 3. a good Case of that Matter. 12 E. 3. Villainage 44. Fitz. 2. Villainage 59.

A And when he sueth the *Nativo habendo*, he shall enter a Complaint before the Sheriff in the County, as he shall do if he sue a Replevin by Writ unto the Sheriff, he ought to enter his Complaint before the Sheriff; so shall he do upon the *Nativo habendo*: And the Plaintiff shall recite how he is his Villain, and how that he fled from him, &c. And by the Writ of *Libertate probanda* that Complaint shall be removed before the Justices of Eyre, or before the Justices *de Banco*, and then the Matter shall be tried before them, &c. Or the Lord may remove the Complaint by a *Pone* before the Justices of the Common Pleas, and thereupon he shall have Process against the Villain, &c. for the Sheriff cannot determine the Title of Villainage in the County; and that is proved by the Words in the Writ of *Libertate probanda*, *viz. Quia hujusmodi probatio non pertinet ad te capiend'*, &c. 11 H. 4. 49. per Norton. [78]  
Fitz. Villainage 3.

B And it is good for the Lord, that when he sueth the *Nativo (a) habendo* unto the Sheriff, that forthwith he sue his *Pone* unto the Sheriff, to remove the Complaint before the Justices of the Kings Bench: For if after the *Nativo habendo* sued, the Lord sue a *Pone* to remove the Complaint before the Justices *de Banco*, and before he delivereth the *Pone* to the Sheriff, the Villain sueth *Libertate probanda*, and delivereth the same to the Sheriff, by which the Sheriff adjourneth the Complaint before the Justices in Eyre, and returneth the Matter upon the *Pone* before the Justices of the King's Bench; now the Justices of the Bench ought not to proceed upon that *Pone* against the Villain, because that the Sheriff hath 11 H. 4. 43.  
Gascoign.  
Old Nat.  
Bre. 46, 25.  
E. 3. 49.  
Villainary  
12. that the  
Party is  
without Remedy,  
if not  
against the  
Sheriff.

A a 2

(a) See a notable Case, 11 H. 4. 48. In a *Nativo habendo*, at the *Pluries* the Sheriff returns a *Mandavi Ballivo*, who did nothing thereon, and it excused him of Contempt. (*Quare*,) then a *Non omittas* issued on which he returned, that before the Delivery thereof to him, the Defendant had delivered him a *Libertate probanda*, so that he could do nothing; and by all the Justices he was amerced. 1. Because after the Return of the Writ, the Sheriff had nothing to adjourn by Force of the *Libertate probanda*. 2. Because the *Non omittas*, tho' awarded after the *Libertate*, ought to be executed, whether it issued by Wrong

or Right, (so it seems to differ from a *Pone*, for that is only to remove the Record, which in Effect was removed before, by the Adjournment, by Force of the *Libertate probanda*, but the *Non admittas* is to another Intent.) 3. For that by the *Pluries*, the Power of the Sheriff to hold Plea is determined, *sed Quare*, for then to what Effect are these Words in the Writ, [*habere facias*]. And also, if so, no *Non omittas* ought to issue, but only Process against the Party, but afterwards the Sheriff in this Case was amerced, and a *Non omittas sicut alias* awarded.

hath returned, that he hath adjourned the Matter before the Justices in Eyre by the Writ of *Libertate probanda*, quod vide Hil. 26 E. 3. and yet the *Pone* was of elder Date than the Writ de *Libertate probanda*, but was not delivered unto the Sheriff before the *Libertate probanda*.

And if a Man sueth several Writs of *Nativo habendo* against two, C the two may join in a *Libertate probanda*, notwithstanding the several Writs.

8 E. 4. 16. And a Man can join in a Writ of *Nativo habendo* but two Villains, D by Martin, but in Favour of Liberty many Villains may join in a *Libertate probanda*.  
all of the Blood may join. But if

(a) And it seemeth that the Villain may sue a *Libertate probanda* before the Justices de Banco, as well as before the Justices in Eyre, although there be no such Writ in the Register. But if such Writ be made returnable before the Justices de Banco, it seemeth it is Good, and they shall proceed thereupon as if it were before Justices in Eyre.

6 E. 2. Vill. 26. after a Nonsuit he was enfranchised during the Plaintiff's Life. Br. Villainage 68. (a) In a Writ of *Niese*, if the Plaintiff be Non-suit after Appearance, F the Defendant shall be for ever enfranchised; quod Vide M. 12 E. 2. and upon Departure in Despite of Court, where he appeareth, and saith he will seek Counsel, and afterward he is demanded, and maketh Default, there the Villain shall be for ever enfranchised: And so upon a *Retraxit*, if the Plaintiff say that he will not pursue his Writ of *Niese*, the Defendant shall be enfranchised for ever. (b)

26. 29 E. 2. cont. before Appearance. 19 E. 2. Vill. 31. 39 E. 2. Fitz. Vill. 34. the Pl. count upon a Confession, and the Defend. acknowledge it, and after the Plaintiff was Nonsuit, and per Cur' it is an Enfranchisement for ever. 30 E. 1. Vill. 46. *Harvy & Mitton*, she is enfranchised but during the Marriage, *Broughton cont.* King took the Difference where the Lord marrieth the Niese, and where a Stranger marrieth her.

28 Aff. 34. And if a Free-man marrieth a Woman who is a *Niese* unto another, G  
Br. Vill. 23. she shall be for ever Free, although that the Husband dieth, and she survive him, and that by *Britton* in his Book *in favorem libertatis* (c).  
A Frankman marries a Niese with And it stands with Reason that the Law be such, because that she and her Husband are but one Person in Law, and she ought to be of the same Nature and Condition to all Intents as her Husband is; but the Lord enfranchised I. S. Husband is for ever Free without any Condition in Law or otherwise, and by Consequence the Wife ought to be of the same Condition and Nature as her Husband is; and then if he be once clearly discharged of Villainage to all Intents, she cannot be a *Niese* afterwards without her own special Act, as by Divorce, or Confession in a Court of Record,  
the Husband died, the Wife is Niese as before, v. 18  
E. 2. Vill. 35. cont. and there by *Devon* she remaineth Niese, but the Seifure is suspended. 13 H. 3. Vill. 43. she shall not be produced to prove Villainage during the Coverture. 30 E. 1. Vill. 46. cont. 31 E. 3. Vill. 21. cont.

and

(a) See 6 E. 2. Villainage 26. Litt. 45. 46. 18 E. 2. Villainage 30, cont. 29. Aff. 4. 12 E. 2. Villainage 24. 19 E. 2. Villainage cont.

31. contr. *Quere* 13 H. 3. Villainage 43. (c) See accordant 11 H. 48. 2 H. 4.

(b) See 4 E. 4. 25. 30 E. 2. Villainage 25.



and that in Favour of Liberty: For a Freewoman shall not be Villain, See Litt. 42. for taking of a Villain to be her Husband.

**H** In a Writ of *Niese* it behoveth the Lord who sueth the Writ to bring with him two Persons at the least who are of the Villains Blood, that will confesse them to be Villains, otherwise the Writ shall abate: And what shall be sufficient Proof, what not, see in the Title of Villainage in the Abridgments. But in a *Nativo habendo*, after the Plea is removed by a *Pone*, if the Defendant will confesse himself to be Villain, then the Plaintiff needeth not to bring any Proof thereof.

**I** If two bring a *Nativo habendo*, the Nonsuit of one of them is the Nonsuit of them both; for Summons and Severance lieth not in that Writ. But in a *Libertate probanda* it is otherwise, for there the Nonsuit of the one shall not prejudice the other.

**K** And it appeareth by the Register, that the Sheriff cannot seise the Villain by Force of this Writ of *Nativo habendo*, although that the Words of the Writ are, *Haberi facias A. nativum & fugitivum suum*; for these Words give him Power to hold Plea, and not otherwise, as it appeareth in 2 H. 4. in a *Faux* Imprisonment. But if the Villain doth confesse unto the Sheriff that he is a Villain, then it seemeth Reasonable that the Sheriff ought to seise him, saving the Opinion of that Book. But the Statute now maketh the Matter clear that the Lord may seise him, and so the Sheriff at his Request. And the Process in the *Nativo habendo* is Summons, Attachment and Distress.

**M** In a *Nativo habendo* the Plea was removed by a *Pone*, and the Sheriff returned thereupon *Non est inventus*, for which a *Capias* was awarded, and after upon Return of *Non est inventus* a *Latitat* was awarded, upon a Surmise made that he was in a Foreign County. P. 7 H. 6.

**N** And in the *Libertate probanda* the Process is as upon the *Pone* sued to remove a Plaint in the County upon a Replevin, Sum<sup>s</sup>, Attachment and Distress. And the Form of the *Pone* upon a *Nativo habendo* is such:

[79.]

*Rex Vic', &c. Pone ad Petitionem Petentis, Loquel' quæ est in Com' tuo per Breve nostrum inter A. & B. quem idem A. clam' Nativum & fugitivum suum; & sum', &c. præd' B. quod tunc sit ibi, præf. A. inde respons. Et habeas ibi Sum', & hoc Breve, & aliud Breve.*

**A** And if the Villain do remain in Antient Demesne of the King in the King's (a) Hands, and hath remained there by a Year and a Day, then the Lord cannot have nor maintain this Writ of *Nativo habendo* so long as he remaineth there: But if he hath not remained within the Antient Demesne of the King a Year and a Day, but for Half a Year, or other Time which doth not make a Year and a Day, then the Lord shall have such Writ unto the Sheriff.

*Rex Vic', &c. Præcipimus tibi quod nisi A. quem B. clamat Nativum & fugitivum suum in Com' tuo, per Breve nostrum manserit in Dominico nostro de S. per unum annum & unum diem sine calumnia, non remaneat Lo-* Ant. 77. E. *quela*

(a) See Nat. 46. contra, if it be in the Hands of any other Lord, but Note; The Lord of a Manor in Antient Demesne might have Villains Regardant at his Death, 39 E. 3. 36. and *Quere*, if all Tenants of Antient Demesne Lands were not originally Villains, and so came to the King's Grantees.

*quela præd' in Com' præd', eo quod manserit in Dominico nostro per minus temporis. Teste, &c.*

But it appeareth by the Writ, that if the Lord claim him within the Year and Day that he came into the Antient Demesne, that then the Villain shall not have Advantage of his staying there: But it seemeth that the Lord ought to claim the Villain within every Year and Day that the Villain stayeth within Antient Demesne, as he shall make his continual Claim to save his Entry into any Land. But if the Villain do remain in any other Manor than in Antient Demesne, which is in Possession of other Lord than the King, and there stayeth a Year and a Day, or for many Years, without any Claim made by the Lord, notwithstanding that the Lord may take and seise him, or have a special Writ of *Nativo habendo* against his Villain directed unto the Sheriff, as above is said.

24 E. 3. Bro.  
Vill. 26.

If a Man purchase a Villain of another unto him and his Heirs, B and the Villain runneth from him, he shall not have this Writ *de Nativo habendo*, because he hath no Proof of his Blood who will confess them to be Villains unto the Plaintiff; and if he bring Men of the Villains Blood, who confess them to be Villains to a Stranger, and not to the Plaintiff, the same is not sufficient Proof. *Quære tamen.*

And the Lord may have a Writ unto the Sheriff to assist him to C distrain his Villains, and the Writ is: *Rex Vic', &c. Præcipimus tibi, quod sis in auxilium A. de F. ubi ipse non sufficit ad distringend' Villanos suos de N. ad faciend' ei conf. & servitia debita & consueta, Teste, &c.* See the Statute *An. 1 R. 2. cap. 6.*

And when the King makes Tallage of his Antient Demesne Lands D in his Hands throughout the Realm, then the other Lords who have Antient Demesne Lands of the King in Fee-farm shall have such Writ to tax them; and the Writ is such:

*Rex Vic', &c. Quia Dominica nostra per Angl' talliari fecimus, tibi præcipimus, quod si Manerium de C. aliquando fuerat Dominicum nostrum, vel Progenitorum nostrorum quondam Reg. Angl', & hucusque consueverant talliari, tunc A. rationabile Talliagium habere fac' de liber' Tenentibus suis in Manerio præd', sicut prius fieri consuevit. Teste, &c.*

And if the King's Villains do convey themselves out of the Ma- E nor, then a special Writ shall be directed unto the Sheriff, that he inquire by the Oaths of Honest and good Men the Names of them, and where they abide, and that he make them return, and abide within the Manors as before.

If a Woman sueth a Writ of *Libertate probanda*, the Form of the F Writ is such: *Monstravit nobis Alicia, quod cum ipsa libera femina sit, &c. & parata libertatem suam, &c. ut supra.*



## *Writ de Securitate Pacis.*

**G**THIS Writ lieth when a Man is in Fear or Doubt that another will beat or assault him, and lieth properly where one Man doth threaten another Man to kill him, beat him, or assault him; then may he come into the Chancery, and pray to have such a Writ unto the Sheriff, and the Form of the Writ is such :

*Rex, Vic' Linc' salut'. Quia A. de B. nobis gravit' conquest' est quod C. ei de corpore suo manifeste minat' ; Tibi præcipimus, quod eidem A. de præf. C. firman Pacem nostram, secundum consuet' Angl' habere fac' ita quod secur' sis, quod eid' A. de corpore suo per præf. C. vel per procuracionem suam dampnum vel periculum non eveniat. Teste, &c.* Or thus: *De incendio domorum suarum manifeste minat' Tibi præcipimus, &c. ita quod, &c. eid' A. de domibus suis præd' per hujusmodi incendium dampnum, &c.* And a Man may have a Writ for the Safety of his Body, and for the Burning of his Houses, all in one Writ. And he may have an *Alias* and a *Pluries*, and Attachment against the Sheriff, if he does not his Office, &c.

**H** And by the antient Course of Law he ought to take his Oath upon a Book before he have this Writ, before a Master of the Chancery: But now they use to sue forth such Writs by their Friends, who will sue for them without any Oath made; and the same is ill done, because they are many Times sued, more for Vexation than for any good Cause; and the Justices of the King's Bench will not grant any Writ for Surety of Peace, without making Oath that he is in Fear of corporal Damage. And the Justices of Peace ought not to grant any Warrant at the Suit of any one to find Sureties of Peace, if the Party who doth require the same will not take his Oath that he requireth the same not for Malice, but for the Safety of his Body. Fitz. Just.  
del Peace.

**A** And if a Man hath sued a Writ against one directed unto the Sheriff, and the Sheriff take Security of him to keep the Peace, and afterwards he breaks the Peace against him who demanded the same; he which demanded the Surety of Peace shall have Attachment against him to find Sureties; and the Writ is such: [80.]

*Rex Vic', &c. Si A. fecerit, &c. pone, &c. B. quod sit coram Justic', &c. ostens. quare cum præf. B. præd' A. de corpore suo minaret', & præf. A. ea occasione Breve nostr' de Pace ind' habend' tibi detulisset, idem B. licet Securitat' tibi præstiterit, quod per ipsum vel procurat' suum præf. A. de corpore suo dampnum vel periculum non evenir', id' B. nihilominus in præf. A. apud W. vi & ar' insult' fecit' & ipsum, &c. in nostri contempt' manifest', & ipsius A. grave dampnum, & contr' pacem nostram: Et habeas ibi pleg' & hoc Breve. Teste, &c.*

And upon this Writ the Plaintiff shall recover Damages, and the Defendant shall be fined for his Contempt, if he be found guilty.

And if any one will have a Writ for Surety of the Peace against any B one who dwelleth within the Cinque Ports, then he shall have a Writ out of the Chancery directed unto the Constable of *Dover*, and unto the Warden of the Cinque Ports, and the Writ shall be such :

*Rex dilectio & fideli suo N. Constabulario Castri sui Dover', & Custod' Cinque Portuum suorum, salutem. Mandamus vobis, quod audita querela A. de eo quod B. qui est de Libertate Cinque Portuum, &c. minat', vocatisque coram vobis partibus præd', auditisque hinc inde eorum rationibus eidem A. super hoc debitum & festinum iustitie complementum fieri faciatis, prout de jure & secundum legem & consuet' Portuum prædictorum fuer' faciend' & alias in casu consimili fieri Consuevit. Tese, &c.*

But it is a common Opinion, the Security which the Sheriff ought to C take of the Party who ought to find Sureties for the Peace, ought to be taken by Bond, that is to say, to bind the Party and his Sureties by Bond, that he keep the Peace, and that he burn not the Houses, &c. 1 E. 3. c. 16. But now after the Statute of 1 E. 3. cap. 16. which appointeth that certain Persons shall be assigned in the Chancery to keep the Peace, there are other Forms of Writs for the Ease of the People who will have the Peace against other Persons, which Writs shall issue out of the Chancery; and some of them are directed unto the Justices of the Peace, and unto the Sheriff, and some are directed only unto the Sheriff: And these Writs are of other Forms, which is such :

*Rex dilectis & fidelibus suis I. &c. & sociis suis Justiciariis nostris ad D Pacem nostram in Com' S. conservand' assign' salutem. Or thus, Custod' Pacis nostræ in Com' S. &c. & Vic' ejusd' Com', & eorum cuilibet, salutem. Or thus, Vic' S. salutem. Supplicavit nobis A. quod cum ipse de vita & mutilac' membrorum suorum, necnon de incendio domorum suar', per E. graviter & manifeste comminatus existat, velimus pro securitat' ipsius A. in hac parte provider' ; Nos supplication' præd' annuentes vobis, vel tibi præcipimus, firmiter injungentes, quod præd' E. coram vobis vel te corporaliter venire faciatis, & ipsum ad sufficientes Manucept' inveniend', qui cum manucapere voluerint sub certa pæna sibi per te vel vos rationabiliter imponend', pro quo nobis respondere voluerint, vel volueris : Or thus, Et ipsum E. ad sufficient' Securitat' inveniend', sub pæna centum libr' ad opus nostrum solvend', vel quilibet eorum sub pæna, &c. quod ipse dampn' vel malum aliquod eidem A. de corpore suo, vel de domibus suis per hujusmodi incendium, non fac', nec fieri procurabit, quovis modo compellatis, vel compellas. Et si hoc coram vobis vel te facere recusaverit, tunc ipsum E. proxim' gael' nostræ committatis, vel commitas, in eadem salvo custod' quousque hoc gratis facere voluerit. Et cum Securitat' illam sic ceperitis, vel ceperis, nos inde in Cancellaria nostra sub sigillis vestris vel alicujus vestrum, vel sub sigillo tuo, distincte & aperte sine dilatione reddas certiores, certificetis, vel certifies indilate, hoc Breve nobis remittentes, vel remittens.*

And for this Form of Writ, when the Writ is in the plural Number, E the Writ is directed unto the Justices of Peace, or unto the Justices and Sheriff. And when it is in the singular Number, the Writ is directed unto the Sheriff only, or unto one Justice only.

And



**F** And if the Husband threaten his Wife to beat or to kill her, she shall have this Writ,

*Supplicavit nobis A. uxor B. quod cum ipsa de vita sua & mutilatione membrorum suorum per præd' B. &c. [ut supra, usque ibi, respond' volueris] quod ipse præf. A. bene & honeste tractabit & gubernabit, ac dampn' & malum aliquod eid' de corpore suo, aliter quam ad virum suum ex causa regiminis & castigationis ux' suæ licite & rationab' pertin' non fac' nec fieri procurabit, quovis modo compellatis, &c.*

**G** And if a Man be in a Variance with other Men, and he is in Doubt that Damage or Hurt will come unto him, or his Servants or his Goods, by Reason of this Variance; then he shall have a special Writ against them directed unto the Sheriff, that he cause them to find Security that they do not damage or hurt the other in his Body, or his Servants, or other his Goods, in a certain Sum, &c. And if they will not find Security, that then he arrest them and keep them in Prison, until they will find Sureties: And that the Sheriff certify all that is done upon the same into the Chancery, upon Pain, &c. as it appeareth by

**A** the Register. And that Security ought to be taken by Recognisance, as it seemeth; *tamen quære.* And when a Man hath purchased such Writ of *Supplicavit*, directed unto the Justices of Peace, or unto the Sheriff, or unto both, against any Man, then he against whom the Writ is sued may come into the Chancery, and there find Sureties in the Chancery, that he will not do Hurt or Damage unto him that sueth the Writ; and then upon that he shall have a Writ of *Supersedeas* out of the Chancery, directed unto the Justices of Peace, or unto the Sheriff, or unto one of them, reciting how that he hath found Sureties, in Chancery according to the Writ of *Supplicavit*, and reciting the Writ of *Supplicavit*, and the Manner of Security that he hath found, and the Sum of Money in which they are bounden; commanding the Justices and Sheriff, that they surcease to arrest him, &c. or compel him to find Sureties, &c. and if they have arrested him for that Cause, and for no other, that then they deliver him, &c. See the Form of the Writ in the Register. And if the Party who ought to find Sureties, cannot come into the Chancery to find such Surety, then his Friend may purchase a *Supersedeas* in the Chancery for him, reciting the Writ of *Supplicavit*, &c. and that such a one and such a one are bounden for him in the Chancery in such a Sum, that he shall keep the Peace according to the Writ of *Supplicavit*: And the Writ shall be directed unto the Justices of the Peace and Sheriff, that they or some of them take Surety of the Party himself, according to the Writ of *Supplicavit*, for to keep the Peace, &c. and that then they surcease to arrest him; and if they have arrested him for that Cause, that they then deliver him.

[81.]  
Fitz. Just.  
de Peace 9.  
Post. 238.

**B** And sometimes the Writ of *Supplicavit* is made returnable into the Chancery at a certain Day; and if it be so, then if the Justices do not certify the Writ, nor the Recognisance, and the Security which is taken, the Party who sued the *Supplicavit* shall have a Writ of *Certiorari* directed unto the Justices of Peace, to certify the Writ of *Supplicavit*, and what they have done thereupon, and the Security which is

found, &c. and so the Party shall have such *Certiorari* unto the Justices of Peace, to certify the Security taken upon *Supplicavit*, although the Writ of *Supplicavit* be not returnable in the Chancery.

And so if a Man demanded Surety of Peace in the County against C any Man, he shall find Sureties in the County before the Justices of the Peace, &c. he who demandeth the Security may sue a Writ of *Certiorari* directed unto the Justices of Peace, to remove the Surety of Peace, and the Recognisance taken thereupon; and to certify that Recognisance, and Security taken, under the Seals of the Justices of Peace, or one of them. And if the *Certiorari* be sued upon a Writ of *Supplicavit*, then the *Certiorari* shall rehearse the Writ of *Supplicavit*; and if it be sued upon Surety demanded in the County without a *Supplicavit* sued, then the Form of the Writ of *Certiorari* is such:

*Rex Custodibus Pacis suæ in Com' L. & eorum cuilibet, sal'. Volentes certis de causis certiorari super tenorem cuiusd' Securitatis Pacis nuper coram R. B. & sociis suis Custodibus Pacis nostræ, & Just' nostris ad diversa Felon', Transgr' & Malefacta in Com' L. audiend' & terminand' assign' de R. de W. de eo quod ipse damn' vel malum aliquod B. de F. aut alicui populo nostro non fac' nec fieri procurabit, ex officio vestro capt' quæ quid' Securitas penes vos residet, ut dicit'; vobis mandamus, quod nos inde in Cancell' nostra sub sigillis vestris vel unius vestr' distinct' & apert' sine dilatione reddatis certiores, hoc Breve nobis remittentes. Teste, &c.*

And when the Writ of *Supplicavit* is directed only to the Sheriff, D then the *Certiorari* shall be directed unto the Sheriff only, to make Return of the Security found, if he have taken any Security, &c.

Ant. 80.  
Post. 82.  
Vid. 12. H. 7.  
17. by Fineux,  
by the Com-  
mon Law the  
Sheriff is Con-  
servator Pacis.

Vid. Lamb.  
110, 11. and  
now by the  
Statute of  
33 H. 8. cap.  
39. it is clear  
that Bond  
shall not be  
taken.

And if a Man find Sureties to keep the Peace against certain Persons before the Sheriff, without any Writ of *Supplicavit* sued by him who demandeth Surety, and without the Writ used of antient Form; then the Party who demanded the Surety may have a *Certiorari* unto the Sheriff to certify the Security taken by him into the Chancery, &c. without making Mention in the *Certiorari* of any Writ sued forth to cause the Sheriff to take such Security; and by that *Certiorari* it seemeth, that the Sheriff *ex officio* may cause the Party to find Surety to keep the Peace, if any one pray the Sheriff to have such Surety, and that the Sheriff bind them by Recognisance, and that he certify the same into the Chancery by the *Certiorari*: For if he certify an Obligation taken for Security, that Certificate cannot make the Bond to be a Thing upon Record, and the Party cannot be bounden unto the King but by Matter of Record, or unless that he Will come into the Court, and confess the same to be his Deed, and pray to have the same enrolled. And it seemeth that the Law is such, because that by the Common Law the Sheriff is Conservator of the Peace, and hath the Keeping and the Custody of the County for the Time that he is Sheriff; and the same appeareth by his Commission and Letters Patent which he hath, the Words of whose Patents are such:

*Rex, &c. Commisimus vobis Custodiam, &c.* and by that he takes his Authority, the which is a Matter of Record, as the Commission which was made to them who shall be Justices of the Peace, the which Com-  
mission,



mission giveth them Authority to hear, determine and enquire of all those Things which are done against the Peace. And by Reason of that Commission they have Power to bind Men by Recognisance to keep the Peace, upon Complaint made unto them by any Person; and yet there is not expresse Authority given them by the Commission to take that Recognisance; but it followeth, that because they have Authority to cause Men for to keep the Peace, and to hear and determine Offences against the Peace, they have Power to bind Men by Recognisance so to do; for every Thing which they have done by Virtue of their Commission ought to be taken as a Matter of Record. And by the same Reason the Sheriff, because that his Patent is of Record, and he is Conservator of the Peace in every Place, every Obligation which he taketh for to keep the Peace shall be in Law taken for a Recognisance, and especially when it is certified in the Chancery by *Certiorari*: But yet all the Pleas that are holden before him in the County are not of Record, nor Pleas holden before him in the County by Writ of Justicies are not taken as Matters of Record; for these Pleas are holden before by Reason of the Courts which he hath by Reason of his Office, as the County and Hundred Court, &c. But the Leets and Torns which are for the Commonwealth, as for keeping of the Peace, these are Courts of Record, and by Consequence for keeping of the Peace the Sheriff is Judge of Record, and may take Recognisance for the keeping of the Peace *ex officio*; but if he so do, and take Recognisance upon a Writ of *Supplicavit*, or other Writ directed unto him to take Sureties for keeping of the Peace, it is the stronger; but give Credit to better Reason, and therefore *quære* thereof.

[82.]

Vide 7 H. 4.  
34. ac.  
Crompt. 125.

Bro. Leet 39.

Bro. Leet 29.  
9 E. 4. 31.

*Writ de (a) Auxilio ad Filium suum Militem faciend'  
vel ad Filiam Maritand'.*

A THE Form of the Writ is such:

Rex, Vic, &c. *Præcipimus tibi quod juste, &c. fac' habere A. rationabile Auxilium de Militibus & liberis Tenentibus suis in Balliva tua, ad primogenit' fil' suum Milit' faciend', vel ad primogenit' filiam suam maritand', juxta formam Statuti de communi concilio regni nostri Angl' inde provis. Teste, &c.*

B And a Man shall not have this Writ before that his Son hath accomplished the Age of fifteen Years, nor for to marry his Daughter before she be of the Age of seven Years, as appeareth by the Statute of *West.* 1. cap. 35.

B b 2

And

(a) A Tenant in Frankalmoign shall not pay Aid. See *Rot. Parl.* 8 E. 2. *Mem.* 23. *pro Abbatisa de Cadamo.*

And he who holdeth his Lands by a Knight's Fee, shall pay 20 s. C unto the Lord, to make his Son a Knight, or for to marry his Daughter, and no more.

And the Tenant who hath Lands of the yearly Value of 20 l. holden in Socage, he shall pay 20 s. unto the Lord to make his Son Knight, or for to marry his Daughter.

And he who holdeth by Half a Knight's Fee shall pay 10 s. and he who holdeth Lands in Socage of the Value of 10 l. by the Year shall pay 10 s. And so according unto the Rate of the Value of the Socage-Land, and according unto the Quantity of a Knight's Fee, he shall pay his Aid, and that by the Statute before-mentioned.

But this Aid, to make the Son a Knight, or to marry his Daughter, D the Lord was to have by the Common Law of his Tenants, and the Statute puts it only in Certainty. And the Lord may distrain his Tenants for this Aid, and avow for the same if he will; and he need not for to sue this Writ unless he will. And this Writ is directed unto the E Sheriff, and he may sue an *Alias* and a *Pluries*, and an Attachment against the Sheriff, if he will not assist the Lord to distrain his Tenants for this Aid.

And the King's Tenants in like Manner shall pay Aid unto the King F to make his eldest Son a Knight, or for to marry his eldest Daughter, &c. viz. Every one who holdeth by a Knight's Fee 20 s. and he who holdeth by Half a Knight's Fee 10 s. and so according to that Rate.

And in like Manner every one who holdeth of the King in Socage 20 l. Land shall pay 20 s. to make his eldest Son Knight, or for to marry his eldest Daughter. And he who holdeth 10 l. Land in Socage shall pay 10 s. and that is appointed by the Statute *de Provisionibus*, Anno 25 E. 3. cap. 10. And the Statute setteth the Aid certain, because that before the said Statute, the King will distrain for more to make his Son a Knight, or to marry his Daughter; but now the Statute appointeth that the King shall have no more.

And if the eldest Son dieth before he cometh to the Age of fifteen Years, G or before the Lord hath levied the Aid to make him Knight, then the Lord shall have Aid for the younger Son, to make him Knight when he cometh to such Age, and yet he is not *primogenitus filius*, as the Writ doth suppose, but he is the *Primogenitus* which is then alive, and that is sufficient, for he ought to be Heir apparent. And so it is if the eldest Daughter dieth before the Lord hath levied Aid of his Tenants for to marry her, then he may levy Aid for the next eldest which is then living, after she is of the Age of seven Years.

And by the Statute the Writ which shall be directed unto the Sheriff H to levy such Aid for the Lord, shall mention that the Son is of the Age of fifteen Years; and if it be for the Daughter, it shall mention she is of the Age of seven Years, otherwise the Writ is not good. But that Form is not in the Register, for it seemeth the Register was made before the Statute of *West. 1.* and therefore the Writ ought to be according as the Statute ordaineth it.



- I And if the Lord have Aid to make his Son Knight, or to marry his Daughter, and dieth before he hath paid the same, then the Son or Daughter shall have an Action of Debt against the Father's Executors for the Money; and if the Executors have no Goods of the Lord, [83.] then the Daughter shall have an Action of Debt against the Father's Heir, for so much of the Money as she wanteth of that which her Father had levied to marry his Daughter: And that is by the Statute of *West. 1. cap. 35.* See after 122. G.
- A And he who holdeth by grand Serjeanty, or petit Serjeanty, shall not pay Aid to make the Son a Knight or to marry the Daughter, as it appeareth *M. 11 H. 4. 32. (a)*
- B And if the Lord doth levy Aid for the Marriage of his Daughter, and afterwards marrieth her, then the Daughter shall not have an Action of Debt against the Father's Executors for the Money levied, &c. But if the Daughter be not married in the Life-time of the Father, &c. by him, then the Action doth lie. And so it seemeth, that if the Son be not made Knight in the Life-time of the Father, that he shall have an Action against the Father's Executors for the Money levied to make him Knight.

*Writ de Scutagio habendo.*

- C THIS Writ for Efcuage lieth in Case where a Man holdeth Lands of the King by Knights-Service, to which Homage, Fealty and Efcuage is appendant: And he who holdeth of any Lord by such Service, who holdeth over of the King by the like Services, when the King maketh a Voyage Royal in War against the *Scots*, or against the *Welsh* in proper Person, or by his Lieutenant, then he who holdeth by Knights-Service ought to go in Person, or find a Man to go for him, in the War with the King, or his Deputy in that War, for forty Days at his own Cost; and if he do not go, or not find a Man so to do for him, then he shall pay for that Default, and not doing of his Service, such Sum of Money as shall be assessed by Parliament; for a Knight's Fee so much, and for Half a Knight's Fee so much; and so according to that Rate. And then he who holdeth by a whole Knight's Fee shall pay so much for Efcuage, as the Parliament doth assess that a whole Knight's Fee shall pay, if he hath not done the Service; and he who holdeth by Half a Knight's Fee shall pay according to the Rate; and those who have done their Services and gone in the War, shall not pay any Thing. And that Sum of Money is called Efcuage, *Servitium Scuti.*
- D And if a Man holdeth of the King by Knights-Service, and to go with him in his War, &c. then that Lord shall have Efcuage of his Tenants who hold of him by the like Service; but the Sum which he shall have

Vide Litt. 19, and 20.

Vide 16 El. Dyer 329. that he who holdeth by the Moiety of a Knight's Fee, holdeth by Knights-Service, and so it shall be intended, if it be not found to the contrary.

(a) Nor any other Tenures but Chivalry and Socage, agreed by all the Justices. 10 H. 6. *Avowry* 267.

have and levy ought to be assessed by Parliament (as afore is said) before he distrain for the same.

Lit. 35.

And if a Man hold of any Lord, to guard his Castle in Time of E War, or to blow a Horn in the Time of Invasion of Enemies, the same is Knights-Service: But it seemeth that for those Lands they shall not pay Efcuage, if they do not their Services, but the Lord shall distrain them for not doing their Service, and shall have Recompence for the same. So that none shall pay Efcuage, but only those who hold by such Services, to go into the War, or to find a Man to go, &c. *tamen Quære.*

And if he who holdeth of the King by Knights-Service to go with F the King in War, do his Service, &c. then he shall have a Writ for him, directed unto the Sheriff, to have Efcuage of those who hold of him by the like Service. And the Form of the Writ shall be such:

*Rex Vic, &c. quia dilectus, & fidelis nostr' W. D. habuit servit' suum nobiscum per præcept' nostrum in Exercit' nostro Scotiæ an' regni nostri primo: Or thus, fuit nobisc' per præcept' nostrum in Exercit', &c. an', &c. sicut per Rotulos A. Constabularii nostri Excercitus nostri præd', nobis constat; or thus, fecit finem nobisc' pro servic' suo in Exercitu nostro Scotiæ, an', &c. sicut per Certificat' Thesaurarii & Baron' nostror' de Scaccario in Cancellar' nostra de mandato nostro missam nobis constat: Tibi præcipimus, quod eidem W. D. habere fac' Scutagium suum de Feodis milit' quæ de ipso tunc tenebant in Ball' tua, vic' octo solid' de Scuto pro Exercitu prædict': Et hoc nullatenus omittas. Teste, &c.*

And by that it appeareth, that if the King's Tenant goeth with the G King's Lieutenant or his Deputy in War, that the Constable of the Host ought to certify the same into the Chancery, before the King's Tenant shall have a Writ to levy the Efcuage of his Tenants; and if the King's Tenant's do agree with the King for his going, &c. then the King ought to be certified thereof in the Chancery by the Treasurer and Barons of the Exchequer, before that he shall have a Writ to levy the Efcuage of his Tenants.

And by that it appeareth, that if the King's Tenant do not go in the H Voyage, nor agree with the King for that Voyage, that then he shall not have Efcuage of the Tenants, nor distrain the Tenants for the same.

And if a Man holdeth of the King by Socage, and others hold of I him by Knights-Service, and the King maketh a Voyage of War into Scotland and Wales; now it seemeth he shall not have Efcuage of his Tenants, if he goeth not with the King in the Voyage; but if he goeth with the King or his Deputy, or agree with the King for that Voyage, then it seemeth he shall have Efcuage of his Tenants, and shall have the aforesaid Writ. And it is not material, whether he hold by Knights-Service, or in Socage.

And if there be Lord, Mesne and Tenant, and each holdeth of the K other by Knights-Service, if the Tenant go into Scotland by the King's common Summons, then the Mesne shall not pay Efcuage: *Quod conceditur per Cur' Trin 5 H. 5.*

And



**A** And if a Man holdeth Lands by such Service that he shall pay a Penny, or a Pair of Spurs, when Eſcuage runneth, &c. the ſame ſhall not properly be Eſcuage, as it appeareth in 15 E. 2. Title *Avowry* in the *Abridgments. Lit. 26.* [ 84. ]

Vide Title  
*Avowry* 215.  
See before  
83 E.

**B** And *vid.* 19 R. 2. that Garder of a Caſtle doth countervail Eſcuage, ſo that his Heir ſhall be therefore in Ward, and ſo of grand Serjeanty; and yet it ſeemeth they ſhall not pay Eſcuage. *Quod vid.* in Title *Gard.* *ibid.* 24, 36.

**C** And in Title *Quare impedit*, in the *Abridgments*, that Eſcuage certain doth not make Knights-Service. *Hill. 5. 3.*

**D** And if there be Lord, and many ſeveral Meſnes and Tenants, and each holdeth by ſeveral Knights-Service, if the Tenant paravail of the Land doth the Services, and goeth with the King in War, &c. the ſame ſhall excuſe all the other Meſnes; for for one Land but one Service can be demanded, *viz.* to go, or to find a Man to go, &c. and ſo the Meſne paramount here is excuſed, becauſe that the Service is done by the Tenant, &c.

**E** And when the King will levy Eſcuage of his Tenants, he uſeth to grant a Commiſſion to certain Perſons. And the Form of the Commiſſion is ſuch,

*Rex dilectis, &c. Assignavim' vos ad Scutag' nostr' de Exercitu nostro Scotiæ, an' reg' nostri primo levand' & colligend' in Comitatu K. tam infra Libertatem, quam extra, de Feodis Milit' quæ tunc tenebant' de nobis in capite, sive de Eſcaetis & Honorib' in manu nostr' tunc exist', sive de perquisito progenitor' nostror', aut nostri, quam de Feodis Milit' quæ tenent' de Archiepiscopatib', Episcopatib', Abbat', Prioratib', de aliis Dignitatib' vel Officiis Ecclesiasticis quibuscunque, quæ tunc in manu nostra fuer', ac de hæreditat' Hæredum infra ætat' & in custod' nostra existen', viz. xl. solid' de quolib' Feodo pro Exercitu suprad'; ita quod omnes denarios inde provenient' habeatis ad Scaccar' nostr' particulat' ad citius quod poteritis nobis ibid' solvend'. Et quia quamplura de Feod' præd' ad manus diversor' devener' tam temporib' progenitor' nostror' quam nostro, quædam, viz. per descensum hæreditat' tam in partes quam alio modo, & quædam per alienac' inde diversimode factas Assignam' vos ad inquirend' per sacrament' probor' & legal' homin' de quolib' Hundredo in Com' præd' tam Milit' cinctor' gladio, quam alior' per quos rei veritas melius scir' poterit, qui tenuer' Feoda militaria tempore præd' in eod' Com' aut aliquam partem Feodor' eorund' ut de Corona nostra Angliæ, vel de perquisito progenitor' nostror' & nostro, & de Archiep' Episcopat' Abbat' Priorat' & aliis Dignitatib' & Officiis antedictis, ac etiam de hæreditatib' Hæred' præd' tunc infra ætatem existen' & quot Feod' & quantas partes Feodi quilib' Tenens hujusm' tunc tenuit, & in quibus Vill' distincte, & qui fuer' antecessores illor' qui tenent per descensum hæreditat' & qui alio modo, ac etiam qui Hæredes fuer' infra ætatem, & in custod' nostra, & qui Archiepiscopat' Episc' Abbat' & Priorat' & aliæ Dignitat' quæcunque vel Officia tempor' illo vacabant, temporal' quor' custod' ad nos pertinet. Et inde vobis in fide qua nobis tenemini firmiter injungendo mandam' quod ad certos dies, &c. præmis. faciat' & expleatis in forma præd' & Inquisition' super præmis. distincte & aperte factas, quæ de singulis Feodis, & de nominib' & cognominib' ea singularat'*

gulat' quond' tenentium dum integr' tenebantur, & eor' qui postmod' ea successively tenuer' post partitiones eor' int' hæred' participes, vel per alienationes, ut præd' est, apertam faciant mentionem, habeat' ad Scaccar' præd' circa fest' Pasc. proxim' futur' sub sigillis vestris & sigillis eor', &c. fact' fuer'. Mandam' etiam Vic' nostro Com' præd' quod ad certum, &c. fact' fuer' tot & tales prob' & legal' homines tam Milit' gladio cinctos quam alios de Balliv' sua, tum infra Libertat' quam extra, per quos rei veritas melius sciri poterit & inquiri, & quod vobis in præmis. pareat & intendat. Mandam' etiam Thesaurario & Baronibus nostris de Scaccar' præd', quod hujusm' Feod' ad Scaccar' præd' reperta, Terras & tenement' in Com' præd' tangentia, vobis celeriter in scriptis mittant in evidentiam, & pro majore expeditione præmissorum. In cujus, &c. Teste, &c.

19 E. 2. Br.  
Tenures 68.  
Lessee for  
Life may do  
Escuage.

6 E. 2. Gard  
12. he shall  
have the  
Ward, be-  
cause it is a  
Profit; he  
shall have  
Escuage, be-  
cause it is a  
Suit real, by  
Wilbie.  
Scrope cont.

And a Venire facias shall be sent unto the Sheriff close upon this Commission, and another Writ close unto the Treasurer and Barons, &c. quod Feoda mittant, &c.

And now it appeareth by this Commission, that the King shall have F Escuage of the Tenants who hold of these Lands or Manors which the King hath in his Hands by Reason of Ward, or by Reason of the Vacancy of a Bishoprick, &c. Or if he have an Estate for Years in the Seigniorie, he shall have Escuage of the Tenants, &c.

And so shall another Lord have, if he have a Term for Years or for Life in the Seigniorie, if he go in Voyage with the King in War into Scotland, &c. he shall have Escuage then of the Tenants which hold of him by Knights-Service; for the Tenant is not bound to go, but for to defend his Lord, or to find a Man for to defend him; and then if the Lord do not go into the War, the Tenant is excused.

### [85.] Writ de Securitate inveniend' quod se non divertat ad partes externas, sine Licentia Regis.

Vid. 1 Eliz.  
Dyer 165.

**B**Y the Common Law every Man may go out of the Realm (a) to A Merchandise, or on Pilgrimage, or for what other Cause he pleaseth, without the King's Leave; and he shall not be punished for so doing; but because that every Man is of Right for to defend (a) the King

(a) See Dyer 189. If one beyond Sea does not return at the King's Command, under the Great or Privy Seal, his Lands and Goods shall be seised for the Contempt. And see the like in Dyer 176. where a Baron had License to go beyond Sea, to be void on a Condition which is afterwards broken. On a Mandamus to return by Letters under the Privy Seal, and a Refusal certified by the Messenger into Chancery, and the Certificate sent by Mittimus

into the Exchequer, a Commission shall issue to seise his Lands.

And note; It is there held, (1.) That the License is not countermandable within the Term. (2.) That the Certificate of the Contempt is not traversable, because not triable per pays. Note also; The King has only the Profits of the Lands, and therefore observe well the Statute 13 Eliz. c. 3. Dyer 375.



King and his Realm, therefore the King at his Pleasure by his Writ may command a Man that he go not beyond the Seas, or out of the Realm, <sup>2 Co. 17. b.</sup> without License; and if he do the Contrary, he shall be punished for disobeying the King's Command. And it seemeth that this Command may be made by the King's Writ under the Great Seal, and also under the Privy Seal, or his Signet; for by the Law the Subject is bounden to take Notice of every of the King's Seals in such Case, as well as of the Great Seal.

**B** And there are two Manors or Forms of such Writs; one is directed unto the Party, and the other unto the Sheriff, commanding him that he cause the Party to find Security that he shall not go out of the Realm without the King's License. And the first is such:

*Rex I. de B. salutem. Quia datum est nobis intelligi, quod tu versus partes exteras absque Licentia nostra clam' destinas te diverter', & quamplura nobis & Coronæ nostræ præjudicialia ibidem prosequi intendis, in nostri contemptum & præjudicium, ac contra proclamationes & inhibitiones nostras inde sæpius factas: Nos, hujusmodi contemptui & præjudicio obviare volentes, tibi districte sub periculo quod incumbit (a) prohibemus, ne versus partes exteras absque licentia nostra speciali aliquo modo te divertas, nec quicquam ibidem prosequi attemptes, seu attemptari fac' quod in nostrum seu dictæ Coronæ nostræ præjudic' cedere valeat quovis modo, nec aliquem ibidem mittas & hac causa. Teste, &c.*

**C** And also the King by his Proclamation may inhibit his Subjects, that they go not beyond the Seas, or out of the (b) Realm, without License, <sup>12 & 13 Ed. 1. Dyer 296.</sup> and that without sending any Writ or Commandment unto his Subject; for perhaps he cannot find his Subject, or know where he is, and <sup>ac.</sup> therefore the King's Proclamation is sufficient in it self. And if the Subject do contrary thereunto, it is a Contempt, and for so doing he shall be fined to the King.

**D** The other Form of the Writ directed unto the Sheriff is such:

*Rex Vic', &c. Quia datum est nobis intelligi, quod A. B. Clericus versus partes exteras, ad quamplura nobis & quampluribus de populo nostro præjudicialia & dampnosa ibid' prosequend', transire proponit: Nos, malitiæ suæ resist' volentes in hac parte, tibi præcipimus, firmit' injungentes, quod præd' A. B. coram te corporalit' venire fac', & ipsum ad sufficientes Manuceptores inveniend', qui eum manucapere voluerint, sub certa pœna eis per te rationalit' imponend', pro qua nobis respond' volueris: Or thus, & ipsum A. B. ad sufficient' securitatem inveniend', sub pœna centum librar' ad opus nostr' solvend', vel quilibet eor' sub pœna, &c. quod ipse versus aliquas partes exteras sine licentia nostra speciali se non divertat, nec quodcunque ibid' prosequatur aut prosequi vel attemptari facere præsumet, quod in nostri contempt'*

C c

vel

(a) See several antient Prohibitions *De non transfretando, &c.* Rot. Claus. 10 H. 3. M. 27. Dorso. Claus. 11 H. 3. M. 25. Dorso. Claus. 2 E. 3. M. 5. Dorso. Et Nota Claus. 5 E. 3. M. 36. Dorso. apponitur Portus de Dover tantum.

(b) See Dyer 165. & Rot. Claus. 25 E. 1. M. 25. Dorso. Lib. Parl. 204. And note Dyer

296. accordant. But till such Proclamation made or Writ issued, it is no Contempt for any Person to go beyond Sea, altho' he intends to live there out of his due Obedience: For his Purpose or Intent is not triable. See the Statute of 5 R. 2. c. 2. repealed by Stat. 4 Jac. 1. c. 1.

*vel præjudic' aut populi nostri dampn' cedere valeat, nec aliquem aut aliquos ibid' mittet ex hac causa, quovis modo compellas. Et si hoc coram te fac' recusaverit, tunc ipsum A. B. prox' goal' nostræ committas, in ead' salvo custodiend' quousque hoc gratis fac' voluerit. Et cum Securitat' ill' sic ceperis, nos inde in Cancellar' nostra sub sigillo tuo distincte & aperte sine dilatione redd' certiores, vel certifies indilate, hoc Breve nobis remittens. Teste, &c.*

And this Writ may be directed unto Justices of the Peace or unto the Sheriff, or unto both; and the Form may be as the Writ of *Supplicavit*, which is directed unto the Justices of the Peace, and unto the Sheriff, to cause him to find Sureties. &c.

And every one, upon a Surmise made unto the Chancellor, may sue forth this Writ for the King; and then the Party against whom it is sued may come into the Chancery, and obtain Licence by Letters Patent or by Letters under the Privy Seal or Privy Signet; and the Licenses are good, although they be not under the Great Seal, because those Letters will excuse his Contempt. And such Licenses are called (a) Pass-ports. And now by the Statute of 5 R. 2. c. 2. it is ordained, That no Person pass out of the Realm without the King's Leave, but those who are excepted in the Statute, and therefore see the Statute.

Repealed  
per 4 Jac. I.  
S. I.

### *Writ of Trespass.*

**T**HERE are two Manners of Writs of Trespass. One is of a Trespass which is Vicountiel, and is directed unto the Sheriff, and is not returnable, but shall be determined in the County before the Sheriff; and in this Writ he shall not say *Quare vi & armis, &c.* but the Form of the Writ is such:

[86.] *Rex Vic' Linc' salut'. Questus est nobis W. de B. quod C. in ipsum W. apud N. insultum fecit, & ipsum verberavit, vulneravit, & male tractavit, & alia enormia ei intulit, ad dampnum ipsius W. non modicum & gravamen; & ideo tibi præcipimus, quod Loquel' illam (a) audias, & postea inde juste deduci facias, ne amplius clamorem inde audiamus pro defectu justitiæ. Teste, &c.*

And by this Writ the Sheriff shall hear and determine that Trespass, &c. by Inquest according to the Common Law; and this Writ is in Effect a Commission unto him, and he may declare upon this Writ unto his Damage of 20*l.* or more.

And another Form of (c) Writ for Goods is such:

A

Rex

(a) See the Statute of *Mag. Chart. c. 30.* That the Sea shall be open for Merchants. *Rot. Parl. 18 E. 3. nu. 10. 22 E. 3. nu. 8. 25 E. 3. nu. 22.*

(b) And yet the Sheriff is not Judge, but the Suitors. 6 Co. 11. yet see 21 H. 6. 35. False Judgment was assigned, because

the Complaint was held before the Under-Sheriff, and not the Sheriff himself; and so *coram non Judice.*

(c) Note; The Writ, if for live Things, is *cepit & abduxit*; if for dead Things, it is *cepit & asportavit.*



*Rex Vic', &c. Questi sunt nobis W. & B. Executores Testamenti C. quod E. & F. bona & catalla quæ fuer' ipsius C. ad valenc', &c. sub custodia ipser' Executor' apud N. inventa, ceper' & asportaver' & alia enormia eis intuler' in retardac' Execut' Testamenti præd'. Et ideo, &c. ne amplius, &c.*

**B** And a Man may sue other Writs of Trespass upon the Case in the County before the Sheriff; and the Forms of the Writs are such :

*Rex Vic', &c. Questus est nobis A. quod cum B. centum oves suas præd' A. super terr' & pastur' suam apud N. per unum annum moratur' vel custodiend' sub certis conditionibus liberaret, præd' B. oves illas ibid' super terram ipsius A. existentes sine licentia & voluntate ejusd' A. infra termin' præd' cepit & abduxit, & alia, &c. ad dampnum, &c.* By which Writ it appeareth, that he cannot take back the Cattle again, if the Plaintiff perform the Conditions.

**C** If a Man borrow a certain Sum of Money, and doth pawn Goods for the same, and he offereth the Money again unto the Party, and prayeth that the Pawn may be delivered back to him, and the other refuse to do it, he shall have an Action of Trespass upon the Case in the County before the Sheriff, to determin the Matter, &c.

**D** If a Man doth deliver unto another a Bull or Oxen, or (a) Cows, to make his Benefit of them for a certain Time upon Condition; if he against the Will of him to whom they were delivered take them back again within the Time, he shall have an Action of Trespass against him, directed unto the Sheriff, to determine that Cause.

**E** If a Man do distrain Kine which are with Calf, and impound them against Law for so long Time that they cast their Calves, then he shall have a special Writ directed unto the Sheriff, rehearsing the special Matter, to end the same before the Sheriff in the County.

**F** And so if a Man have a Salt-pit by the Sea-coasts, and another erecteth a Wall betwixt the Sea and the Salt-pit, if the other Person throws down the Wall, by which the Sea-water overfloweth the Salt-pit, he shall have a special Writ directed unto the Sheriff, to end the Matter in the County.

**G** And so for every Manner of Trespass done, a Man may (b) chuse to have such a Writ directed unto the Sheriff, to end the Matter before him in the County, or to sue a Writ unto the Sheriff, returnable in the Common Pleas or the King's Bench.

C c 2

And

(a) *Note*; This special Writ, *Questus est nobis A. quod cum B. 20 oves, &c. liberasset, &c. præd' B. sine licentia prædicti A. oves illas infra Term' cepit & abduxit.* Register 92. For it is clear the Bailor in such Case cannot retake them within the Term. 2 E. 4. 13. 17 E. 2. 22. 1 H. 7. 15. And yet if he, or his Donee, takes them, the Bailee shall not have a general Writ of Trespass; for then he ought to recover Damages to the Value of the Beasts, against him who has the general Interest, which is not agreeable to Reason. See 11 H. 4. 24. adjudged;

but against a Stranger, the Bailee shall have a general Writ of Trespass. See 11 H. 4. 17. 21 H. 7. 15. and shall recover Damages to the Value of the Beasts, because he is chargeable to the Bailor in Detinue. But if after the Taking the Bailor releases to the Trespassor, the Action *Vi & armis* remains as before; and yet on the Matter shewn, he shall recover Damages only for the Compesturing, &c.

(b) So that it seems in a *Justicies* the Sheriff may proceed, though the Freehold comes in Debate. 6 H. 4. 2.

And if the Writ of Trespass be returnable, then the Writ shall be of another Form, for then these Words *Vi & armis* (a) shall be in the Writ; and if it want those Words, the Writ shall abate, if they be not Writs of Trespass upon the Case; which Writs of Trespass shall not have these Words *Quare vi & armis* in the Writ, although they are returnable in the Common Pleas or King's Bench; and if they have the Words *Quare vi & armis* in the Writs, it shall be good Cause to abate the Writs. And the Form of a Writ returnable in the King's Bench is such:

*Rex Vic', &c. Si A. fecerit, &c. tunc pone per vad' & salvos pleg' B. I. quod sit coram nobis in Octavis S. Mich', ubicunque fuerimus tunc in Angl'. And if it be returnable in the Common Pleas, then thus: Coram Justic' nostris apud Westm' in Octavis S. Mich', ostens. (b) quare vi & armis in ipsum A. apud N. insult' fecit, & ipsum verberavit, vulneravit, & male tractavit, ita quod de vita ejus desperabatur, & alia enormia ei intulit, ad grave dampnum ipsius A. & (c) contra pacem nostram. Et habeas ibi nomina pleg' & hoc Breve. Teste, &c.*

And if a Man do imprison another, then the Form of the Writ of K Trespass is, *Ostens. quare vi & armis in ipsum A. apud N. insult' fecit, & ipsum (d) vulneravit, imprisonavit, & male tractavit, & alia, &c.*

And it is not material whether he be wounded or not, for the Form of the Writ is such; but the Damages shall be increased for the same, if he do recover. And if he do imprison him until he pay a Fine for his Deliverance, then the Form is, *Quare vi & armis ipsum A. apud N. cepit, imprisonavit & male tractavit, & ipsum in prisiona ibid', quousque (e) Finem per tantum pro deliberatione sua habend' cum pref. B. fecisset, detinuit, & alia enormia ei intulit, &c.*

And a Man may have one Writ of Trespass for divers Trespases (f), L  
*&c. as for breaking of his Close, cutting of his Trees, fishing in his Ponds*

2 H. 4. 13r  
 7 E. 6. Dy. 70.  
 20 E. 3. 38.  
 p. Torpe.  
 22 H. 6. 59.

(a) But the *causa causans*, or immediate Cause and Conveyance to an Action on the Case, may be laid *Vi & ar'*. 12 H. 4. 3. 8 R. 2. *Action sur le Case*. 29 E. 3. 20. 16 E. 4. 7. otherwise if it were only for Nonfeasance. 43 E. 3. 39. See 2 Salk. 636.

(b) Note; If the Writ be *simul cum aliis Malefactorib' vi & armis, &c.* it shall abate; otherwise if it be *simul cum aliis ignot'*. 8 H. 5. 5.

(c) Note; If he counts of a Trespass done Part in another King's Time, and Part in the present King's Time, the Writ shall be *contra pacem nup' Dom' Regis, &c. & Dom' Regis nunc, &c.* and it shall be good *reddendo singula singulis*. 21 H. 4. 15. And on a Writ *contra pacem nostram* only, he shall not recover Damages for a Trespass done in the Time of another King. See 2 Salk. 640.

(d) Note well; A Justification for a Bat-

tery is no Justification for wounding, &c. 21 H. 6. 27.

(e) And if he justifies the Imprisonment, he need not answer to the Taking of the Fine, for it is but accessory; and therefore the Plaintiff ought to answer to the Justification of the Imprisonment, and not the Taking of the Fine. *Quare*, 19 E. 3. 19.

Note; If one be taken in the County of G. and imprisoned till he makes Fine in the County of W. he may have this Writ in the County of G. 38 E. 3. 29.

(f) Yet for taking of a Hawk (reclaimed) he shall not have Trespass, but Trover and Conversion. *Quare*, 2 Lev. 201. 1 Salk. 667, &c. and the Count ought to be that he is reclaimed; and it is not sufficient to say he was possessed of him as of his proper Goods. Dyer 306. *Trespass de Bonis asportatis* ought to alledge them to be *suis*. 13 H. 4. 11.

Note.



Ponds, beating of his Servants, and taking of his Goods and Chattels, and all in one Writ; and for cutting of his Wood, and for taking his young Hawks; and the Form of the Writ is, *Quare vi & armis boscum ipsius A. apud N. intravit, & tres pullos Esperworum suorum, pretii tanti, nuper in eod' bosco nidificantium cepit & asportavit, & alia enormia, &c.*

And by this Writ it appeareth that the Property of the Hawks are in him who hath the Land by the Word (*suorum*) in the Writ. *Post.* 89. E.

M And for hunting in a Warren the Form is, *Quare, &c. Warrenam ipsius A. apud N. intravit, & in ea sine licentia & voluntate sua fugavit,* [87.] 34 H. 6. 38. & (a) *Lepores, Cuniculos, Phasianos, & Perdices cepit & asportavit,* (b) 38 E. 3. 10. &c. *Post.* 89. K.

A And if a Man hunt and take another Man's Conies in his Close which is no Warren, then the Form of the Writ is, *Quare, &c. Clausum ipsius A. apud N. (c) fregit, & in eo sine licentia & voluntate, &c. fug', & tot (c) Cunicul' pretii tanti cepit & asportavit, &c.* 43 E. 3. 13. Bro. Property 37.

And.

*Note;* In such a Writ the Defendant pleads, That as to a Pheasant, he found it in his own Ground, out of the Plaintiff's Warren, and he let his Faulcon flie at it, who followed it into the Warren, &c. and the Defendant followed his Hawk thither and took it; and it was ruled in a Manner by *Knivet*, That the Entering and Taking there was tortious. 38 E. 3. 10. Otherwise if the Killing and Taking had not been in the Warren. 12 H. 8. 10. See in Trespass *quare vi & armis in Warrenam suam intravit*. It is no Plea in Bar that the Freehold of the Soil is in the Defendant. See 3 H. 6. 13. 5 H. 7. 10. 17 E. 4. 6. 10 H. 7. 25. 11 H. 6. 34. *contr'*.

*Note* this Diversity. (1.) If one comes into a Chase, Forest or Warren, and drive the Beasts out of it, and he who drives out the Beasts, or any other who has Notice of it kills the Beasts, the Owner of the Forest or his Officer, may make fresh Pursuit, and thereon take or seise the dead Beast; for so long as he that killed it, had Notice, &c. the legal and local Property on the fresh Pursuit shall be said to continue. 12 H. 8. 10. adjudged. (2.) If a Beast of Forest, Chase, &c. comes by Escape into my Land, I may kill him on my own Ground without forestalling him, and the same is not punishable. 12 H. 8. 12. 21 H. 7. 30. provided it be not an Hart proclaimed. 7 H. 6. 36. (3.) If Beasts of Chase come by Escape into my Land, which is a convenient Distance from the Park, I may chase them with Greyhounds; and if the Greyhounds follow them to-

wards the Park, and I keep them out, and the Greyhounds kill them, I may now take them, and am not punishable; otherwise if the Lands are not a convenient Distance. 18 H. 6. 22. 43 E. 3. 8.

*Note;* In Trespass for entring into a Park, Warren, &c. it is no Plea to say it is no Park or Warren, but he must plead *Non cul'*, and give the Matter in Evidence. 10 H. 6. 16. 19 H. 8. 9. and therefore it is held clearly, that if one has a Warren, if he inclose or impark without the King's License, and another hunts there, and he brings *Trespass de Parco fracto*, the other may plead *Non cul'*, and give this Matter in Evidence; for none may have a Park without the King's Grant, or by Prescription. *Note* also; The Plaintiff in this Writ does not make any Title to the Park in his Count, and therefore it is no Plea, that he had no Park by Prescription or by License. For how can Judgment be given on a Title where none is alledged. 18 H. 6. 21.

(a) *Note;* He shall not say *lepores suos*, for he has not the real Property in them, but only a Property *Causa Warrenæ*, and only during the Time they are in the Warren. 3 H. 6. 55.

(b) And he shall shew in his Count the certain Quantity (or Number) of the Things, but he shall not say *pretio* (or of what Value) *Quare*, 30 E. 3. 10. for it is only (*Fugavit*) in this Writ.

(c) *Note;* He shall not have Trespass for the Conies only. 43 E. 3. 24.

3 H. 6. 55. ac.  
5 H. 5. 2.  
22 H. 6. 59.

And by this Writ it appeareth that he who hath the Land hath no Property in the Conies. And so of a Park; *Quare, &c. (a) Parcum ipsius A. apud N. fregit, & in eo, &c. fugavit, & feras cepit & asportavit; Or thus, Quare, &c. Herbam ipsius A. apud N. nuper crescit, vel Blada ipsius A. apud N. nuper crescentia, ad valentiam decem libr', cum quibusdam Averiis depastus fuit, (b) conculcavit, & consumpsit, & alia, &c. And he need not say in the Writ, Quare, &c. Clausum fregit, &c. & Herbam, &c.*

And there is another Form of Writ of Trespass, *De solo fossa & carb' bonib' maritimis asportatis.* And another Form of Writ in the Register, *C De equo & catall' arrestatis sine causa, quousque Finem fecerit.*

And another Form, *De domo fracta & maremio asportat'.*

And the Writ of Trespass for Executors for Goods taken out of their Possession, which is such: D E

*Rex, &c. Si A. & B. Executores Testamenti C. fecerint, &c. tunc pone, &c. quare quatuor Boves qui fuer' ipsius C. pretii centum solid' sub custodia ipsorum Execut' apud N. inventos cepit & abduxit, & Blada quæ fuer' præd' C. ibid' crescentia messuit, & Blada illa ac alia bona & catall' quæ fuer' ejusd' C. sub custodia eorund' Executor' ib' inventa cepit & asportavit & alia enormia eis intulit, in retardationem executionis Testament' præd' & cont' pacem nostram.*

And if an Abbot and his Monks break the Seal of any Writing which they have made to another Person, the Party shall have a Writ of Trespass against them in such Form:

*Rex, &c. Si A. fecerit, tunc pone Abbatem de C. & I. & D. Commonachos ejusd' Abbatis, &c. quare, &c. quoddam Scriptum ipsius A. communi Sigill' præd' Domus signat', per quod idem Abbas & Conventus ejusd' loci tenebant' præf. A. in victu & vestitu & omnibus necessariis suis sibi invenient', quousq; idem Abbas & Conventus eandem A. alicui viro viginti libratas terræ vel redd' habenti maritaver' apud L. invener' malic' freger', & alia, &c.*

And also a Man may have a Writ of Trespass for fishing in his several Piscary, and for cutting of his Grass, and for plowing of his Land, or for shearing of his Sheep, and all in one Writ.

And another Form of Writ for moving of his Corn, and cutting of his Grass, and felling of his Woods, and eating of his Corn and Pastures, and all in one Writ.

And also another Writ of Trespass made unto a Woman before (c) H Coverture, which is such:

Si

(a) Note; The Defendant ought to answer to the Breaking of the Park; as also to the Driving or Chasing. 20 H. 6. 37. West. 1. c. 26. and the Plaintiff shall recover for the Enting into the Park, tho' the Defendant does not hunt, if he came for that or other ill Purpose. 5 H. 5. 1.

Note; The Plaintiff shall not have Judgment according to the Statute, if he does not bring a special Writ according to the

Statute, and not a general Writ. 9 H. 6. 2. 47 E. 3. 10. adjudged.

(b) And note; He has only a local Property, and 'tis void, without a special Custom to the Contrary. If Beasts of Chase or Forest, go out of the Bounds of the Forest, he, in whose Lands they are, may kill them, except a Hart proclaimed. 7 H. 6. 36. 21 H. 7. 30. 43 E. 3. 8.

(c) Note; This Writ does not suppose a dum



*Si A. & B. uxor ejus fecerint, &c. tunc pone, &c. quare, &c. quoddam Forcerium ipsius B. apud N. invent' fregit, & quoddam Script' obligatorium in eodem Forcerio inventum cepit & asportavit, &c. & alia, &c. ad grave damnum ipso' A. & B. & contra pacem nostram.*

I And another Writ in the Register, *De Navi abducta, & catall' asportat'.*

K And another Writ, *De Bladis & graminibus vinearum depast', &c.*  
And another Writ, *De Bladis & graminibus bosci cædui depastis, &c.*

L And another Writ, *De Stagno fracto*, thus: *Quare, &c. quoddam Stagnum apud R. malitiose fregit, per quod aqua ab eod' Stagno decurrens Vivarium ipsius A. ibid' in tantum inundavit quod per cursum aquæ illius & inundation' præd' piscis in eod' Vivar' tunc existens ad valenc' cent' marc' exivit; & alia, &c.*

By which it appeareth, that he shall have a Writ of 'Trespas *Vi & armis*, because he causeth the Water to run out of his Pond, by which the Fish there go away.

M And there is another Writ *De equis abductis*, and Goods and Chattels unto the Value of 5 *l.* and 100 *s.* of Money in Money told, *ibidem invent' cepit, &c.*

N And there is another Writ of Trespass against those who lie near the Plaintiff's House, and will not suffer his Servants to go into the House, nor the Servants who are in the House to come out thereof; and for taking and impounding his Cattle, and not suffering him to sue a Replevin, &c. And the Form of the Writ is such :

*Rex, &c. Si, &c. pone, &c. quare vi & armis Mansion' ipsius A. apud H. obseder' & homines & servientes suos extra Mansion' prædictam existentes eandem Mansionem ad servic' & commodum ipsius A. inibi faciend' ingredi, ac quosd' alios homines & servient' suos inibi existentes Mansion' prædictam ad terram ejusdem A. ibidem excolend' exire non permiser', per quod cent' acr' terræ ipsius A. incultæ remanser', & idem A. profic' terr' sue prædictæ ad valentiam viginti librarum, & servic' suum eorundem hominum & servient' per magnum tempus amisit; necnon Averia ipsius A. ibidem imparcaver' & ea ibidem imparcata detinuerunt, non permittentes ea eidem A. secundum Legem & consuetudinem Regni nostri replegiari; & alia enormia ei intulerunt, &c.*

[88.]

And there is another Writ of an House broke, and Prisoner taken away thus :

*Quare vi & armis domum ipsius A. apud N. in qua idem A. (a) quend' H. de C. Scotum, per ipsum in guerr' capt', tanquam prisonar' suum, quousque sibi de*

*dum sola*, but the Count does. 21 *H. 6. 30.*  
7 *H. 7. 2.* Dyer 105. but if it be of a Battery of the Wife before the Coverture, the Bill or Writ shall be *dum sola*. See 22 *Aff. 87.* and the Verdict may find all guilty, where one only beats, &c.

(a) Note; If this Writ be *Bona & Catalla*, he may not count of one live Thing, as a Horse, &c. but ought to have a special Writ. 10 *H. 6. 22.* yet shall not abate

for Variance of the Count, per Paston. See 21 *H. 6. 29.* If the Writ be *bona & catalla*, and he counts of Pikes or Tenches, Horses or Cows, the Writ shall abate, for they shall be intended living: Therefore the Writ for these ought to be special, viz. *Equos vaccas, &c.*

Note; Where the Writ was *De bonis & catallis*, it concluded *ad valenciam*; as 3 *Equos pretii, &c.* 21 *H. 6. 39.* Dyer 121.

*de centum libris, per quas idem H. redemptionem suam cum præfato A. pro vita sua salvand' fecerat, satisfactum foret, detinuit, freger', & ipsum H. ceper' & abduxer' & alia enormia, &c.*

2 & 3 P. & Ma. Dyer 121.

And Note that the Form of the Writ for a live Thing, as Horses, or Men, or such like, is to say, *ceperunt & abduxerunt*; and for a dead Thing, to say, *ceperunt & asportaver'*, &c.

And there is another Writ of Trespass; if a Man take another and imprison him until he make Oath that he will not trouble nor imprison him for a Trespass done to him before, or imprison him until he hath made unto him a Release of all Actions.

And if a Man taketh his Villain and puts him into the Stocks, and others come and break the Stocks, and let him out, he shall have an Action of Trespass, and the Form is,

*Quare cum idem R. S. nativum & fugitivum suum, in Manerio suo apud K. pro eo quod idem R. non fuit justificabilis, cepisset, & ipsum ibidem in cippis ad castigand', prout sibi bene licuit, posuisset, prædict', &c. præd' cippos vi & armis freger', & ipsum S. ceper' & abduxer', &c.*

Post. 89. M.

There is another Form of Writ thus, *Quare vi & armis, &c. quodd' Fossatum in L. terris & finis in tantum implevit, quod aqua de Fossat' præd' exiens Blad' ipsius W. in garbis in horreo suo ibidem existent' superundavit, per quod Blada præd' ad valentiam C. s. putrefacta fuer' & Arbor' suas ibid' nuper crescen' ad valentiam xl s. radicitus evulser' & asportaver', & Blada sua ibidem nuper crescen' ad valenc' xl s. cum quibusdam Averiis suis depasti fuer', conculcaver' & consumpser', &c.*

And by the first of these Writs appeareth that that is an Action of Trespass upon the Case, and the Residue a common Action of Trespass.

And if a Man draw Wine out of the Vessels, and put Water in the same to fill them up again, he shall have an Action of Trespass in this Form:

*Quare vi & armis, &c. lx. lagenas de quodam dolio Vini ipsius A. pretii quatuor libr', in navi prædicti I. apud S. posit', abinde usque S. ducend', extraxit & dolium illud aqua maritima adimplevit, ita quod residuum Vini præd' putridum devenit, & totalit' deperit; & alia, &c.*

3 H. 4. 12. b. & infra H.

And another Writ of the Fish of his Piscary, and Herb fed up, and Land digged thus:

*Quare vi, &c. in libera Piscar' ipsius A. apud N. piscatus fuit, & Herbam suam ibid' nuper crescen' falcavit, & in terra sua similiter ibid' fodit, & terram inde project', ac Herbam prædict' & Piscem (a) de Piscariis prædict' ad valentiam C. s. ceper', &c.*

7 H. 7. 13. supra G.

(b) And it appeareth here that there are divers Manners of Forms of fishing in his Fish-pool. One Writ is, *Quare, &c. in Vivariis suis piscatus*

(a) Though the Writ be *Piscem*, he may count of more Fishes; for the Word *Piscis* is *nomen collectivum*. 4 H. 6. 11.

(b) Note; In Trespass for fishing in his several Fishery, *Liberum Tenementum* is a good Plea, but he cannot conclude Judgment *si alio* without Title shewn. For in Trespass, the Thing it self is not in Demand, as it is in Assise, or *Quod permittat*.

24 H. 6. 43. 20 H. 6. 40. See 17 E. 4. 6. 18 E. 4. 4. 10 H. 7. 24, 27. and yet he cannot have a several Piscary in another's Soil, as well as a free Piscary by a special Title. 7 H. 7. 13. 20 H. 6. 4.

Also note, That he who has *liberam Piscariam*, may have Trespass against a Stranger; for he has more than Common of Piscary. 17 E. 4. 7. 7 H. 7. 13.



*tus fuit, &c.* Another Writ is, *Quare, &c. in separ' Piscar' ipsius A. piscatus fuit, &c.* And the third Writ is as before, *Quare in libera Piscar' ipsius A. apud N. pisc' fuit, &c.*

**I** And a Man shall have a Writ of Trespafs for breaking of his House, *Supra 87. G.* and cutting of his Trees, and for fishing in his Ponds, and for taking of his Goods and Chattels, and for taking of his Plow-cattle, and impounding of them, and for taking of his Doves out of his Dove-house; and the form is such:

*Quare, &c. Domos ipsius A. apud N. fregit, & Arbores suas ibid' nuper crescen' succidit, & in Vivariis suis ibid' piscatus fuit & Pisc' inde ac Arbores præd', necnon alia bona & Catall' sua, ad valentiam C. s. ibidem inventa cepit & asportavit, & Averia sua de caruca sua ibid' cepit & imparcavit, & ea tamdiu imparcata detinuit, quod quadraginta acr' terræ ejusd' A. per magnum tempus incultæ remanser', & Columbas columbar' sui ibidem cum retibus & aliis ingeniis cepit & asportavit, per quod idem A. volatum Columbar' sui præd' totaliter amisit; & alia, &c.*

And by this Writ it (a) appeareth that a Man shall have an Action of Trespafs for taking of his Plough-cattle, and shall join the same in a common Action of Trespafs, with other Trespasses; and also that he shall have an Action for taking of his Doves.

**K** And a Man may have a Writ *de Clauso fracto, & Bladis in garbis & Fæn' ad valenc' C. s. depastis, &c.* or of eating of his Hay only, *&c.* Or, *Quare Arundinem ipsius R. ad valenc' C. s. apud N. nuper crescen' mesuit & asportavit.*

**L** Another, *Quare, &c. Lapidem molarem ipsius Prioris pretii xl. s. apud N. fregit; & bona & catalla, &c.*

**M** And by this it appeareth, that if it be a live Thing, or dead Thing for which the Action is brought, it is not material whether he say *pre-  
tiii, &c.* or *ad valenciam, &c.* (b)

And another Writ of a Mill-pool broken in two Towns thus,

*Quare, &c. Stagnum molendini ipsius R. de B. apud R. & S. fregit, per quod aqua de eodem Stagno totaliter exivit, & eidem R. proficuum molendini sui præd' ad valenc' C. s. amisit; & bona & catalla sua, &c.*

**N** And another Writ, *De Domibus & catallis combustis.*

**O** And another Writ, *De Ovibus tonsis & Lanis asportatis.*

D d

And

(a) See *per Hankf.* If a Writ of Trespafs be *ad valenc', &c.* the Plaintiff shall recover the Value of the Goods, and the Jury shall be charged to inquire of the Value; and therefore it is a good Plea to say that the Plaintiff is possessed of the Beasts; for the Writ ought to be, that the Defendant had taken and detained his Beasts *Sine Causa rationabili, per Hankf. sed Culp' contr'*, and that it shall be given in Evidence, that the Plaintiff is seised of the Goods in Mitigation of Damages, *11 H. 4. 24, 25*; and agreeing with this Opi-

nion of *Culb.* that the Plaintiff shall have a general Writ, and that it shall not abate, but the Matter be given in Evidence. See *1 H. 6. 7. 12 H. 6. 6. 19 H. 6. 34. 21 H. 6. 15. 7 H. 6. 27.* Trespafs *quare 5 Boves apud D. cepit & fugavit & imparcavit, &c. per quod 3 de bovis pretii 5 l. fame interierunt, & alii deteriorati sunt ad dampnum, &c.* and it was abated, because the Value of all the Beasts was not shewn; *contra* if it had been *fugavit & imparcavit*, but not *cepit.* *1 H. 5. 3.*

(b) See *2 H. 4. 11. per Markham.*

C. 5. Part 108. in Trespafs the Defendant as to one Thing justified, and pleaded Not guilty to another, and the Jury found one Issue, and taxed Damages entirely. *22 El. Dy. 369. 2 & 3 Ma. Dyer 221. 17 E. 3. ac.*

[89.] And another for taking him and imprisoning him in one Place, and from thence carrying of him to Prison in another Place, and there detaining him in Prison.

And another Writ for taking of his Sheep in one Place, and impounding of them in another Place, until he hath paid a Fine.

And another Writ for breaking of his Sluices in such Manner :

B.

*Quare, &c. Exclusum stagni molendin' ipsius Abbatis & Parcum suum ibid' apud S. freger' & in eo sine licentia, &c. & (a) Arbor' suas, &c. & in separali Piscaria, &c. & Piscem inde, & Abor' præd' ad valenc' C. s. necnon Feras de præd' parco ceper'.*

Another Writ, *Quare vi & armis, &c. Exclus. ipsius A. ultr' fossatum de C. N. pro salvatione terrarum suarum apud C. &c. vi & armis fregit, & marem inde ad valenc' C. s. in minutas partes secuit, ita quod per fracturam hujusmodi terræ & prata ejusd' A. ibidem inundat' fuer', & id' A. proficuum terrarum & pratorum præd' ad valenc' C. s. totalit' amisit; & alia, &c.*

And another Writ: If a Man doth imprison his Villain, and set him D in the Stocks for some Offence, and another Man doth set him at large, the Lord shall have an Action of Trespass for breaking up the Stocks, and for setting his Villain at large.

See 91. K. And another Writ: If a Man be riding on the Way, and another E Man striketh his Horse, by which the Rider falleth and is hurt; he which is cast off his Horse shall have Trespass against the other.

And another Writ for putting out another Man's Eye thus: *Quare vi & armis dextr' ocul' ipsius W. apud N. eruit, & alia, &c.*

And the Master of an Hospital shall have an Action of Trespass for C taking of Goods in the Time of his Predecessor. And the Form of the Writ is such: *Rex, &c. Si W. de N. Custos Hospitalis sancti Michael' de C. fecerit, &c. tunc pone, &c. quare vi & armis bona (b) & catall' præd' Hospitalis, ad val' C. s. tempore I. de C. nuper Custodis Hospital' præd' prædecessoris præd' custod', apud R. inventa cepit & asportavit, &c. & alia, &c.*

And the like Writ for an Abbot or Prior, and in the End of the Writ H he shall say, *in deterioration' Domus & Ecclesiæ ipsius Abbatis*: And so it seemeth it shall be in the End of the Writ for an Hospital.

And another Writ for an Abbot thus: *Quare vi & armis portas & domos Dom' & Eccles. ipsius Abbat' apud L. fregit, & Blada Dom' & Eccles. præd' tempore præd' Abbatis ibidem crescon' ad val', &c. cum quibusd' Averiis depastus fuit, conculcavit & consumpsit, & bona & catalla earund' Domus & Ecclesiæ tempore præd' ad val' C. s. ibidem inventa cepit, &c. & alia, &c. (c)*

And

(a) See for Justification in Trespass de arborib' suis, 13 H. 7. 9. And note; If he justifies the Cutting, he shall not answer the Carrying away; for if he did not cut them, the Writ ought to be *Quare bona & catalla cepit*. 33 H. 6. 12. Kelw. 114. 12 H. 4. 1. 5 H. 5. 8.

(b) Note *Præd' Hospitalis*, but not so de Custod' & Ecclesiæ. 9 H. 6. 25. Vel præd' I. or if the Predecessor himself had brought the Writ, it should be *bona & catalla ipsius*

I. See accordant 18 E. 2. 3. 47 E. 3. 23. 9 E. 4. 33. and so of a Replevin brought at Common Law. 16 E. 3. Trespass 251. and so it is of Waste ad exheredationem Domus & Ecclesiæ de B. See 7 H. 6. 18.

(c) But when such Trespass is done to the Predecessor. See 13 . 4 16 4 E. 4. 8. contra 2 H. 4. 4. the Writ being *arbores Domus & Ecclesiæ de B.* See 18 E. 2. Trespass 237.



- I** And another Writ for a Trespass done in the Time of Vacation of an Abby or Hospital; *Quare vi & armis bona & catall' Domus & Ecclesiæ ipsius Abbatis de C. (a) tempore Vacationis Abbat' prædict' ad val' C. s. apud L. inventa cepit & asportavit, &c. & alia, &c. in deteriorationem, &c. & cont' pacem, &c.*
- K** And another Writ of Trespass; *Quare vi & armis Warrennam ipsius A. apud C. intravit, & in ea, &c. fugavit; & Boscum suum similiter ibidem intravit, & tres pullos suos Espervorum in eod' bosco nuper nidific' pretii xx. s. ac alia bona & catall' sua ad val' C. s. ibidem inventa, necnon lepores, cuniculos & perdices in Warrenna cepit, &c.* Ant. 86, 87
- L** (b) And another Writ of Trespass; *Quare vi & armis centum Oves ipsius A. apud T. invent' cum quibusd' canibus fugavit, canes illos ad mordend' Oves præd' in tantum incitando, quod per fugationem illam & morsus canum præd' Oves præd' multipliciter deterioratæ fuer' & magna pars Ovium ill' fetus abortivos fec' & in T. servient' suum ibidem insult' fecit, &c. per quod, &c.*
- And another Writ, *De Porcis fugatis ita quod interierunt, &c.*
- And if a Man do incite or procure his Dog to bite any Man, he shall have an Action of Trespass for the same.
- M** And if a Man fill a Ditch with Mud and Earth, which had used to be a Watercourse, for which another Man's Land is drowned, &c. he shall have a Writ of Trespass, *Quare vi & armis*, and the Writ is such: *Quare vi & armis quodd' Fossatum apud T. per quod quædam aqua decurrit ib' terra & fimo in tantum implevit, quod aqua illa de antiquo cursu suo impedita xx. acras terræ ipsius A. ibidem diversis Bladis seminata inmundavit, per quod idem A. proficuum terræ suæ præd' totaliter amisit; & alia enormia, &c.* Ant. 88. D.
- N** And if a Man distrain Cattle, and carrieth them into unknown Places, the Party shall have an Action of Trespass *Quare vi & armis* for the Distraining of them; and the Writ is such:
- Quare vi & armis Averia ipsius A. apud N. cepit, & ea ad loca ignota fugavit, ita quod Averia ill' eidem A. secundum Legem & consuet' Regni nostri replegianda invenire non potuer' & alia, &c.*
- O** There are divers Writs of Trespass founded upon Statutes, whereof some do follow. (c)
- Rex, &c. Si A. &c. tunc attach' B. &c. quod sit coram nobis, &c. ad respond' præf. A. quare vi & armis C. uxor' præf. A. apud N. rapuit, & eam cum bon' & catall' præd' A. ad val' C. marcarum, abduxit, & eam adhuc ei detinet; & alia, &c. ad grave damnum, &c. (d) contra formam Stat' in hujusmodi casu provisi, &c. Teste, &c.*

D d 2

Another

(a) See when on a Vacation by Deposition, in the Time of E. 1. *Trespass* 242. the Bishop shall not punish Trespass on the Temporalities, but the King. 38 E. 3. 30. *Vide* accordant 39 E. 3. 19.

(b) If my Dog kills your Sheep, and I freshly after the Fact tender you the Dog, you are without Remedy. 7 E. 3. *Barr.* 290.

(c) Note; The Action is to commence with an Attachment, and not with a *Pone per vadios*. 14 H. 6. 2. See the Stat. of *West.* 2. cap. 38.

(d) Note; The Party shall not have the Punishment enjoined by the Stat. but where he is sued by a Writ that makes mention of the Statute. 9 H. 6. 2. *Vide infra* A.

Ant. 69. I.

Another Writ: *Quare vi & armis Averia ipsius A. apud N. in Com' tuo cepit, & ea a Com' illo usque P. in Com' Kanc' fugavit & imparcavit, & ea ibid' imparcata detinet, cont' Legem (a) & consuet' Regni nostri & cont' pacem nostram. Et habeas ibi, &c.*

[90.]

Another Writ of Trespass, (b) that Distresses, &c. be not out of the A Fee, or in the King's Way thus: *Si A. fecerit, &c. tunc pone, &c. quod sit, &c. coram, &c. ostens. quare cum de communi Concil' regni nostr' provisum sit, quod non liceat alicui Distractiones facere ex quacunque causa extra Feod' suum, nec in via (c) Regia aut communi strata, nisi de nobis & ministris nostris specialem auctoritatem ad hoc habentibus, præd' B. qui minist' noster non est, ut dicitur, extra Feod' suum apud N. Averia, ipsius A. contr' form' provisionis præd', &c. Et habeas, &c.* Otherwise in the Highway thus: *Averia seu (d) bona & catalla ipsius A. in Regia via cepit, & imparcavit, & ea adhuc imparcata (e) detinet, contra Legem & cons. Regni nostri, &c. & cont' pac' nostram: Or thus: Et Averia præd' diu imparcata detinuit contra Legem, &c. & contr' pacem nostr', &c. Lt habeas, &c. Et Averia illa eid' A. interim deliberari fac', Teste, &c.*

Another Writ of Trespass against him who distraineth a Man by (f) B his Plough-cattle, or by his Sheep: *Ostens. quare cum ad communem utilitat' Regni nostri stat' sit, quod nullus de eodem Regn' distringat' per Averia carucar' suarum, vel per Oves, pro debito nostro vel alieno, seu alia quacunque occasione, per Ball' seu minist' nostros aut alior', quamdiu alia habeat Averia per quæ rationalis Distinctio super ipsum fieri possit pro debitis illis levand', exceptis duntaxat Averis illis quæ in damno alicujus inventa secundum Legem & cons. Regni nostri imparcari contigerit; præd' W. (g) Oves præd' A. apud*

(a) Note; This Writ lies against a Lord. 3 E. 3. 5. adjudged. But if A. holds an Acre, &c. in one County of a Manor in another County, the Lord may distrain in the said Acre, and carry the Distress into the other County. 1 H. 6. 3. per Cur. 22 E. 4. 11. *Quare*, 18 H. 7. *Kelw.* 50. 14 E. 3. *Barr.* 275.

Note; In Trespass for a Distress taken and driven into another County against A. and B. A. pleads Not guilty, and B. says that he is Bailly of J. S. of whom the Plaintiff holds, &c. And for Services arrear he distrained, and drove into another Place within the same County, without doing any Thing against the Peace, and tenders to aver his Plea. And resolved, (1.) That the Defendant here need not make an Avowry, for he shall not have a Return here, for the Writ does not command the Sheriff to make Deliverance. (2.) That the Issue shall be tried in the County where the Taking was, and not where the Driving is supposed, for there they cannot take Conscience, whether they were the

same Beasts that were taken in the other County. P. 13 E. 3.

(b) But note; The Party grieved shall not have Advantage of the Statute of *Marlb. c. 35* except by a special Writ founded on the Statute, and not by a general Writ of Trespass. 43 E. 3. 30. *Temp. E. 1. Avowry* 130. 11 R. 2. *Avowry* 87. 4. H. 6. 2. per *Bab. contr. Martyn*, 9 H. 6. 2. Ratio because in a special Writ the Party makes a Fine to the King. 8 Co. 60. *Beecher.*

(c) One may distrain in *via Regia* for an Amercement in a *Leet. Temp. E. 1. Avowry* 232. 19 E. 2. *ibid.* 221, 225.

(d) Without saying *pretii* in the Writ, but it must be in the Count. 19 E. 3. *Brief* 842. Note the Reason, because they are taken *nomine distractionis*, and see there *contra pacem* omitted.

(e) See 39 E. 3. 20. *Detinuit quousque Finem se. it.* held good.

(f) See this Writ lies where the Rent is arrear. *Temp. E. 1. Avowry* 230.

(g) Note; The Writ lies between Lord and Tenant, and although the Tenant pays his Rent and has Deliverance, he shall



*apud N. vel Averia ipsius A. de caruca sua apud N. cont' form' Stat' prædict' cepit & imparcavit, & ea adhuc ibidem imparcata detinet, cont' Legem & conj. &c. & cont' pacem, &c. Et habeas, &c. & Averia illa eidem A. interim deliberari fac'. Teste, &c.*

And so note that in this Writ of Trespafs the Sheriff shall make Deliverance unto the Party, as he shall do upon a Replevin: And if the Party hath the Beasts delivered unto him before the Writ sued, then this Clause, *Averia illa eidem A. interim deliberari facias*, shall not be in the Writ.

**C** Another Writ: If a Man doth take the Oxen or Carts of another, or other Things, as Barges or Ships, to carry Goods, against the Will of the Owner, then he shall have such Writ:

*Rex Vic', &c. Si, &c. pone, &c. ostens. quare cum in Stat' dudum apud Wettm' edit' int' alias contineatur, quod nullus capiat equos, boves, plaustra, carucas, naves, & batellas ad cariagium fac', contra voluntat' illius cujus res ill' fuer' ; præd' B. & D. vi & armis quandam carectam & quatuor equos præd' A. apud N. invent', contra voluntatem ipsius A. ad cariagium fac' ceper', & per magnum tempus detinuer'; & alia enormia, &c. ad grave damnum, &c. & contra formam Statuti prædict', & contra pacem nostram. Et habeas ibi, &c.*

**D** Executors shall have such Writ of Trespafs for Goods and Chattels taken in the Life of the Testator.

**E** And if a Man do distrain out of his Fee, he who is distrained shall have an Action of Trespafs against him; and in the End of the Writ there shall be this Clause, *& Averia illa eidem A. interim deliberari facias, &c.* And by that Writ the Sheriff shall deliver the Cattle to the Party, as in a Replevin.

**F** If a Man cast any Thing upon the Feet of another, by which he is hurt, he shall have an Action of Trespafs for the same.

**G** If a Man take a Canon or Monk out of the Monastery, the Abbot or Prior shall have an Action of Trespas thereupon, thus:

*Ostens. quare quand' domum infra Priorat' de B. quæ est Cella ejusdem Abbatis, in qua Frater I. Canonic' ejusdem Abbatis, pro delicto in quod contra Regulam Ordinis sui incidit, existit, juxta dicti Ordinis regulam castigand', vi & armis fregit, & præf. I. cepit & abduxit; & alia, &c. Or thus; Quare, &c. Clausum ipsius Abbatis apud L. fregit, & fratrem W. de L. Canonicum, &c. in Carcerali custodia infra clausum prædict' juxta Regul' Ordinis sui castigand' detentum, ab eadem custod' extraxer' & abduxer'; & alia, &c.*

(a) And.

shall have this Writ. 18 E. 2. *Action sur Stat. 35.* And note; If at the Time he takes the Distress, he cannot find other Distress, but only Sheep, &c. although he could (not) have distrained before the Distress is cognisable, (*viz.* If he hath a Seignior, &c. and so cause to distrain.) whereupon they were at Issue, whether he could

find sufficient Distress on the Tenements. 29 E. 3. 17. But note; The Count may be general as the Writ is, *viz. contra formam Statuti*, and need not alledge that *nulla alia rationabilis Distressio inveniri potuit*, but that shall come on the other Side, and it is supplied by the *contra formam Statuti*. Dyer. 342.

(a) And a Man shall have an Action of Trespass for taking his Son H and Heir, or his Daughter and Heir, and marrying her. And the Writ is such :

12 H. 4. 16. *Si R. fecerit, &c. tunc pone, &c. W. & B. quod sint, &c. Quare vi, &c. Johann', vel Johann', as the Case is, filium vel filiam & hered' pred' R. apud I. invent' rapuer', maritaverunt, & abduxerunt; & alia, &c. (b)*

And the King shall have an Action of Trespass for taking of his Goods. And the Writ is such :

*Quare vi & armis bona & catalla nostra ad val', &c. & alia enormia ibidem perpetravit, in nostri contempt', & grave dampnu', &c. & contra pacem nostram.*

And for such Trespass done upon the Soil and Possession of the King, the Use is for to have an Information of Intrusion for the King in the Exchequer, and the Defendant there to answer it. And when he appeareth in the Exchequer, the Course is there to bind him in Recognizance at his Peril to leave the Possession to the King; and yet it seemeth the King may have an Action of Trespass, *Quare Clausum fregit, &c. & Herbas depast' fuit, &c. & Arbores succidit, &c.*

And there are other Writs of Trespass, *Quare Fossata & Sepes ipsius K. A. fregerunt, &c.*

And another Writ for digging in his Land, and for putting of Lime and Hemp in the Ditches, by which the Water is corrupted; and the Writ is,

[91.] *Quare, &c. in separali solo ipsius A. apud N. fodit, & terram inde projectam in Fossatis suis ibidem projecit, & limum & cannabum in eisd' fossat' posuit, per quod aqua in foss. existens per corruption' lini & cannabi præd' adeo infecta devenit, quod Piscis in eisd' fossat' existens ad val', &c. interit; & al', &c.*

And another Writ of Trespass for assaulting a Man in his House, and A lying in wait for him, until he make Oath that he will not bring any Action against him, &c. and the Writ is such :

*Quare in ipsum I. &c. & ipsum I. in quandam dom', ad quam pro vita sua salvanda ib' fugit, insecuti fuer', & ipsum inibi per tempus non modicum obseder', & ipsum sic obsecum quousque corpor' præstit' sacrament' quod aliquam Action' versus præf. &c. occasione transgr' præd' seu alia occasione quacunque non moverit, detinuer', &c.*

And

(a) The Declaration may be *de raptu Custodie*, as well as *de raptu heredis*. Palm. 75. *Banfield versus Hutchins*. Also it may be without saying *enjus Maritagium ad ipsum pertinet*. 12 H. 4. 16. *contr.* 32 E. 3. *Gard.* 329.

See 21 H. 6. 15. the Father commits his Son of the Age of one Year to a Nurse, and goes out of the Country, and 'tis reported about the Country that he is dead; and for that the Infant was ill kept, the

Uncle takes him, and retires to the Father, when he shall not be punished for this Taking. And Note; he is named Heir in the Life of the Father. 31 E. 3. *Brev.* 327.

(b) And he shall recover the Value of the Marriage. 12 H. 4. 16. And Note 3 Cro. 55. *Gray and Jefferies's Case*. See 29 Aff. 35. 21 H. 6. 24. *Dyer* 304. *Post.* 140. F. 143. R.



**B.** And if a Man have Waif and Stray within his Manor by Prescription, 40 E. 3. 10. and another Man taketh the Waif or Stray out of the Manor, &c. he who hath the Manor shall have an Action of Trespass for them, &c. and that without any Seizure of them before. (a)

**C.** And if a Man take another Man and imprison him, and compel him to make to him a Statute-Merchant, or a Release, or an Acquittance, he shall have an Action of Trespass for the same, and the Writ shall recite the Matter, and the Detaining in Prison of him, *quousque*, &c.

**D.** If a Man have a Wreck by Prescription, or by the King's (b) Grant, &c. if Goods be wrecked upon his Lands, and another taketh them away, he who hath the Wreck shall have an Action of Trespass, (c) *Quare vi & armis*, for thus taking without Seizure thereof before; and the Writ is such:

*Ostenfur', quare cum idem Th. Dom' Manerii de Eston Bavent existat & ib. habere debeat, ipseque & antecessores sui Dom' Manerii præd' a tempore quo non extat memoria hucusque habere consuever', Wreccum maris infra præcinct' Manerii præd'; præd' Jocus & Robert' bona & catalla ad valenc' C s. apud S. infra præcinct' ejusd' Maner' ad terr' projecta, quæ ad ipsum Th. tanquam Wrec' pertin' deberent, vi & armis ceper' & asportaver' &c. Or thus, decem libr' in pecunia, &c. Or, quare cum per Chartam, &c. habere debeat, &c.*

**E.** If a Man send his Servant to apprehend his Villain, and to bring him unto him, and the Servant apprehendeth the Villain, and in bringing him unto his Master another rescueth him from the Servant, and lets him go at large; the Master shall have an Action of Trespass for this Rescous, and not the Servant, for the Wrong is done unto the Master, &c.

**F.** If an Abbot or other Man hath a Hundred, and hath all Felons Goods within the Hundred, if any Felon within the Hundred be attainted, and the Sheriff taketh the Goods of the Felon within the Hundred, he who hath the Hundred, and such Liberty, shall have an Action of Trespass against the Sheriff for the Goods which the Sheriff took, and the same shall be, *Quare vi & armis*, &c.

**G.** (d) And if an Abbot or other Person ought to have Toll in any Place, and sendeth his Servant to take the Toll, and another doth disturb his Servant to take the Toll; the Abbot, or he who ought to have the Toll, shall have a general Action of Trespass, *Quare vi & armis* they did assault his Servant, and disturbed him to take the Toll. And the Writ is such:

*Quare*

(a) See 43 E. 3. 8. 10 H. 6. 11. And *Note Dyer* 338. A Waif happens in one Franchise, and escapes into another Franchise before Seizure, the second Lord shall have it, for the Property is not changed before the Seizure, by the better Opinion. 12 H. 8. 10. See 33 H. 8. *Estray*. 11. 7 E. 4. 10.

(b) That it is so in the King's Case, see 14 E. 2. *Trespass* 326.

(c) See the like Writ maintained without Title made, (And *Note*, there it is an Action on the Case.) 13 E. 3. *Brief*. 647

(d) But *Note*; In this Case it seems, that the Name of the Buyer, as also of the thing sold, for which the Toll is due, ought to be shewn in the County. *Quare*, 9 H. 6. 45.

*Quare cum idem Abbas, per Chart' progenitor' nostr' præd' quondam regum Angl', habere debeat Theolonium de rebus venalib' ad Villam de S. venient' ib', iidem R. & I. in S. servient' ipsius Abbatis, per ipsum ad hujusm' Theolonium in Villa præd' colligend' deputat', vi & armis insultum fecer', & ipsum quo minus hujusm' Theolonium colligere & percipere potuit impediver', & præd' catal' per ipsum S. pro hujusm' Theolonio nomine Districcion' ibid' capta & attachiata eidem S. abstuler', per quod idem Abbas profic' de hujusm' Theolonio proveniens per magnum tempus amisit ; & alia, &c.*

Vid. 1 H. 5. 1.  
47 E. 3. 22.

And so if a Man ought to have Toll in a Fair, &c. and his Servants **H** are disturbed to gather the same, he shall have the like Action for Assault (a) of his Servants, and for the Loss of their Service, and for the Disturbance made unto them, and for losing the Profit of his Toll, and all in one Writ.

And if a Man have a Fold in common with two other Men, and the one do disturb him to set up his Clays and Pales, and break them, he shall have an Action of Trespass against them in this Form, *Quare vi & armis*, thus :

*Si Priorissa de T. fecerit, &c. tunc pone, &c. E. &c. ostens. quare cum ead' Priorissa quandam Faldam apud F. simul cum præd' E. ac M. de B. habere debeat, ipsaque Priorissa & ejus prædecess. hujusm' Faldam cum præf. E. & M. & eor' antecess. a tempore quo non extat memoria, semper hucusque habere consuever' ; præd' E. claias & palos ipsius Priorisse in Falda eorund' Priorissæ, E. & M. apud dictam Villam de F. nuper erecti' positos, vi & armis fregit, & ipsam Priorissam quo minus claias & palos in Falda præd' prout ad ipsam pertinuit, ponere, vel aliquod commodum de Falda illa percipere potuit, impedivit ; & alia, &c.*

A Man shall have an Action of Trespass for taking of his Appren- **I**  
21 H. 6. 31. tice, or for taking of his Servant.

(b) And the Church-wardens shall have an Action of Trespass for **K** taking the Goods of the Church, either in their own Time, or in the Time of their Predecessors.

(c) And a Man may have an Action of Trespass for breaking of his **L** House or Close, and alledge a Continuance of the Trespass, and of the Breaking thereof, from such a Day unto such a Day ; as well as he

(a) Note ; Trespass for beating his Servant, *per quod Servitium amisit*, lies, altho' he was not retained, but served only at Will. 11 H. 4. 2. per *Hull* accordant. And so if A. retains B. to be his Servant, who departs into another County, and serves C. A. before any Request or Seizure, cannot beat B. and if he does, C. shall have Trespass against him. 21 H. 6. 9. and recover Damages, having Regard to the Loss of the Service. 22 Aff. 76. and the Retainer is traversable. 11 H. 6. 30.

(b) Note ; They are the Goods of the Parishioners, and therefore in a *F' Fac'* against a Parson *de bonis Ecclesiasticis*, if the

Sheriff delivers the Goods of the Church in Execution, Trespass lies by the Church-wardens. 8 H. 5. 4. But an Action cannot inure to them in Succession, *Dyer* 48. An Indictment for breaking the Church, and taking the Goods of the Parishioners. *Dyer* 99.

(c) In Trespass with a *continuando* from such a Day to the Day of suing the Writ, the Defendant says, that A. was seised and incoffed him, and that so he was seised, till the Plaintiff by Colour entred, upon whom he the Defendant entred ; the Plaintiff makes Title, that C. was seised and incoffed him, and that he was so seised



he may have for treading of his Grass or cutting of his Corn, &c. (a)

M The Ordinary shall have an Action of Trespass for those Goods which he hath to administer as Ordinary ; where a Man dieth Intestate, and the Goods are taken out of his Possession, he shall have an Action of Trespass for the taking thereof. But he shall not have an Action of Trespass for Goods taken out of the Possession of him that died Intestate, but the Administrators shall have such Action ; for the Ordinary shall not have an Action for Goods or Debts of him that died Intestate, but only an Action of Trespass for the Goods taken out of his own Possession. And the Process in this Writ of Trespass is an Attachment and *Disfringas* ; and if the Sheriff do at the Attachment or *Disfringas* return *Nihil*, then he shall have a *Capias*, and *Alias*, and *Pluries*, and *Exigent*, and so Process of *Utlagary* against him.

[92.]

A If the King granteth a Protection unto a Man, by which Protection he taketh him, his Lands and Goods into his Protection, as the common Course and Form of Protections are ; now if another Man do afterwards take his Goods, or doth enter into any of his Lands or Tenements during the Time that the Protection is in Force, he shall have a special Action of Trespass against him in this Form :

*Ostenf. quare cum nuper suscepimus in protect' & defension' nostram W. homines, terras, res, reddit', & omnes possessiones suas, omnib' & singulis inhibent' ne quis injuriam, molestiam, damnum inferret seu gravamen ; id' B. bona & catal' pred' W. dum sub protect' nostra fuit, apud N. invent', ad valent' cent' librar', vi & arm' cepit & asportavit, & homines, &c. per quod, &c. & alia, &c. ad grave dampnum ipsius W. & cont' pacem nostr'. Et habeas ibi nomina Pleg', & hoc breve. Teste, &c.*

B And also he who hath the King's Protection, if any Man take his Goods, or enter into his Lands, &c. or beat his Servants, &c. he shall have a special Writ unto the Sheriff for to enquire of them, and to certify the same before the King, &c. and it seemeth the King shall make Process against them by *Venire facias*, as upon an Indictment, and that thereupon they shall be fined, and the Writ is such :

*Rex Vic' Linc' salut'. Præcipimus tibi, quod per sacrament' probor' & legal' homin' de Com' tuo per quos, &c. diligent' inquiras, qui malefactor' & pacis nostr' perturbator' bona & catal' A. ad valentiam cent' librar', apud N. inventa quem suscepim' in defension' nostr' special', homines, res, redditus, & omnes poss. suas, omnib' & singul' inhibentes, ne quis eis injuriam, molestiam, damnum inferret seu gravamen, vi & arm' ceper' & asportaver', & in homines suos ibid' existentes, insultum fecer', & ipsos verberaverunt, &c. & alia, &c. ad grave damnum ipsius A. & contra protect' nostram pred' & contra pacem nostram : Et Inquisition' inde distinct' &*

E e

aperte

seised, till he was disseised by the Defendant, *alsue hoc*, that A. infeoffed him ; and it was found for the Plaintiff, and 'twas moved in Arrest of Judgment, that the Plaintiff had abated his own Writ ; for seeing he had shewn that the Defendant disseised him, and had not shewn any Re-en-

try after such Disseisin, he shall not have Trespass with a *continuando*, but only for the Entry, and so was the better Opinion. 19 H. 6. 28.

(a) See Trespass of Corn (Blees) taken with a *Continuando*. 21 H. 6. 43.

## Writ de Trespass sur le Case.

*aperte factam nobis, sub sigillo tuo & sigillis cor' per quos facta fuerit, sine dilatione mittas, & hoc Breve.*

But note, That there is a Statute made *An. 28 E. 3. cap. 6.* that willeth, that no Commission or Writ shall be from thenceforth granted unto the Sheriff, to enquire, &c. But if such Writ or Commission be granted, &c. *Quere* if it be good; it seemeth not, for this Statute is made only to bind the King that he shall not grant, &c.

There is another Writ *De Feno in Prato prostrat' & depasto*; and another Writ *De Clauso Ostio, & Fenestris fractis, &c.*

## Writ de Trespass sur le Case.

THERE is another Form (a) of Writ of Trespass upon the Case, E which is to be sued in the Common Pleas or King's Bench; and in that Writ he shall not say *Vi & armis, &c.* but in the End of the Writ he shall say *contra pacem*; and the Form is such:

*Rex Vic', &c. Si Matilda de D. &c. tunc pone, &c. quod sit, &c. ad respond' tam nobis quam Matildæ, quare cum ead' Matilda nuper quoddam Breve nostrum de Prohibitione versus præf. I. ne ipse Placitum in Cur' Christianitatis de catallis & de debitis que non de Testamento vel Matrimonio sequeretur, in Cur' nostra impetrasset, eademque Matilda dictum Breve nostrum præf. I. apud C. liberasset; idem I. recepto dicto Breve nostro, illud ibid' in luto projecit, & pedibus suis conculcavit, necnon Placitum præd' sequutus est in ead' Curia Christianitatis, in nostri contempt', & ipsius Matildæ grave damnum, ac contra pacem nostram. Et habeas, &c. (b)*

Another Writ; *Quare in aqua de Plim' per quam inter Humber & Gaunt F navium & battellorum communis est transitus, ex transverso aquæ pilos defixit, per quod quedam navis cum triginta quarteriis brasii ipsius W. submersa fuit, & viginti quarteria brasii, pretii C. s. deperier'; & alia enormia, &c.*

And if the Lessor do oust the Executors of the Lessee of their Term, G they shall have a special Action of the Case against the Lessor, and the Writ shall be by Summons, &c. and not by *Pone per vadios & salvos pleg'*, as the other Writ of Trespass is; and the Form is such:

*Si Johan', Executrix Testam' E. de C. fecerit te, &c. tunc sum', &c. P. & M. ostens. &c. quare cum iidem P. & M. unum molendinum & sex acras terre cum pertin' in N. præf. E. de C. ad terminum qui nondum præterit dimississent, & idem E. de C. in Testamento suo præd' molendinum & terr', usque ad finem termini præd', præd' Executrici, ad executionem Testam' præd' inde faciend', legasset; præd' P. & M. post mortem ipsius E. de C. præd' molend' & terras (durante termino præd') ingressi, ea præd' Executrici*

Note well  
this Writ,  
that it lieth  
for casting a  
Writ into  
the Dirt.  
Crompton  
133. ac.

(a) See 7 E. 3. 2. 46 E. 3. 19. 31 E. 3. *sur le Case* 48. So against one of whom  
(b) Action on the Case against one who another bought Goods which he had before  
had bought certain Trusses of Hay, and stolen. 42 Aff. 8. So for not keeping of  
letting them lie and rot, &c. without Goods, &c. But if 'twas without the De-  
fendant's Default, he shall be quit. 42 Aff. 9.



*trici detinent minus iuste, in retardation' execut' Testam' prædict', ut dic'. Et habeas, &c.*

And if the Sheriff doth arrest a Man upon a *Capias* directed unto him sued forth upon a Statute-Merchant, and afterwards set him at Liberty, he who sued the Writ shall have a special Action upon the Case against the Sheriff, which is such :

[93.]

**A** *Rex Coronatoribus salut'. Si A. fecerit, &c. tunc pon', &c. Vic' nostrum Suff. quod sit, &c. ofens. quare R. mercatorem, nuper per Breve nostr' eid' Vic' direct' prætextu ejusd' Recognitionis centum marcarum eid' A. præf. R. juxta formam Statuti apud Acton Burnel nuper editi fact', capt' & custod' ejusd' Vic' apud O. existen', præf. A. de præd' centum marcis minime satisfacto, contra voluntatem ipsius A. libere abire permisit, ad grave damnum ipsius A. & in retardation' execution' Recognitionis prædict', ut dicitur. Et habeatis, &c.*

**B** And if the Sheriff in a Writ of Account or Debt return upon any, *quod non est inventus, nec habet terras, &c. per qu' (a) distringi poterit, &c.* for which a *Capias* is awarded against him, and he arrested thereupon, where he hath sufficient Lands, or Goods and Chattels ; then he shall have an Action upon the Case against the Sheriff, directed unto the Coroners, as before is said, &c.

**C** And so another Writ ; If the Sheriff hath (b) a Prisoner committed unto him for Debt, &c. and afterwards he suffer him to go at Liberty before the Debt be satisfied, &c. he shall have an Action upon the Case against the Sheriff ; and yet it seems he may have an Action of Debt against the Sheriff.

14 H. 7. 10.  
22 E. 4. 1.  
and 2.  
34 H. 6. 6.  
21 H. 7. 30.  
36 H. 6. 3.

**D** If a Man be indicted of Felony before any Justice, and one *T.* as one of the four Men of the Town, and *Reeve*, give the Evidence as Indictors, &c. and afterwards he who is indicted is acquitted, &c. and afterwards the Bailiff of the Hundred or other Officer shewed unto *T.* that he who is acquitted hath a Writ of Conspiracy against him, and that he hath a *Capias* to arrest him, by which he is arrested and imprisoned until he pay six Marks for a Fine for his Deliverance, &c. he shall have an Action of Trespass upon his Case : But it seemeth he may have a general Action of Trespass in that Case upon False Imprisonment, if he have not any Writ directed unto him.

**E** If a Replevin be removed out of the Liberty by *Pone* into the Common Pleas, and afterwards (pendent the Plea there) the Bailiff of the Liberty doth award a Return in the Liberty to the Defendant, for which he taketh the Cattle and impoundeth them, by Means whereof some of them die for want of Food ; the Party grieved shall have an Action upon the Case against the Bailiff of the Liberty who awarded that Return to hold Plea after the Matter removed in the Common Pleas.

**F** If a Man do attach another or his Goods for Debt, &c. in a Liberty, and after the Bailiff, by Covin betwixt him and the Defendant to dis-

E e 2

continue

(a) See *Rot. Claus.* 26 E. 1. M. 8. *Dorso*. Escape, when by the King's Command.

(b) *Quare*, If he is not excused of an Stat. 1 R. 2. cap. 12. *Dyer* 161.

continue the Plaint, deliver the Goods attached to the Defendant, the Plaintiff shall have an Action upon the Case against the Bailiff, and the Writ is such :

*Si A. fecerit, &c. tunc sum' I. Ballivum magnæ Cur' sive Mercati de N. quod sit, &c. ostens. quare cum idem Ball' ad Quercimoniam præd' A. B. per quædam catal' sua, ad respondend' præf. A. in Cur' prædict' secundum Legem mercatoriam, prout moris est in regno nostro Angl', de debito decem librarum, quod idem A. de præf. B. exigit, attachiasset, ac in Loquela prædict' in eadem Cur' inter partes prædict', que se in Inquisitionem inde posuer', in tantum processum fuisset ; prædict' Ballivus pendente coram eo Inquisitione prædict', per Collus. inter ipsum & præfatum B. habitam in Cur' prædict', malitiose recessit, & Inquisitionem prædict' capere recusavit, per quod Placitum præd' extitit discontinuat' ; idemque Ballivus catalla prædict' eidem B. præf. A. de debito præd' non satisfact', postmodum liberavit, ad damnum ipsius A. viginti librarum, ut dicitur, &c.*

(a) And a Man shall have an Action of 'Trespass upon the Case against his Neighbour who hath Lands betwixt him and the Sea, and ought to make Banks ; and cleanse certain Ditches and Sewers betwixt him and the Sea, and he doth not cleanse them as he ought to do, by Reason whereof his Land is surrounded, &c. he shall have his Action upon the Case against him for not mending the Banks, and cleansing the Ditches and Sewers, &c.

If a Man be committed unto the Gaol for Debt or Arrearages of Account, and the Gaoler of Malice lay so many Irons upon him, or set him in the Stocks, or keepeth his Victuals from him, by Reason whereof he is so spent, that he becomes lame, or hath other Infirmity ; he shall have an Action upon the Case against the Gaoler.

Vid. Br. Attachment 23. But if he hath no other Goods, then he may attach these Goods.

If a Man doth distrain any Prior's, or other Prelate's Horse, whereupon he is riding in his Journey, for or upon any Contract, Debt, or Trespass done by him or his Predecessor, when he might have distrained or attached him by other Goods or Chattels of the said Prior or Prelate, then he shall have an Action upon the Case, which is such :

*Si A. Prior, &c. pone B. &c. ostens. quare, cum non liceat alicui Prælatum, Magnatum, seu aliquam personam Ecclesiastic' regni nostri, per idem Regnum alicubi transeuntem, occasione alicujus Contractus seu debiti per equitaturum suum proprium distringere, cum alia Averia seu catalla ibidem habeat, per quæ rationabilis Distric'tio super ipsum fieri valeat ; præd' B. præf. Priorem per Villam de C. transeunt' occasione cujusdam Contractus inter S. quondam Priorem de, &c. Predecessorem præd' Prioris, & præd' B. dudum, ut dicitur, per quendam equum palfridum suum, quanquam per alia Averia & ca-*

[94.]

(a) See 29 E. 3. 32. And the Action lies in the County where he ought to repair. 7 H. 4. 8. 14 E. 1. 3. 15 E. 4. 18. or in the County where the Land is surrounded. 11 R. 2. Action sur le Case 36. And one shall have a View on this Writ, and the Writ shall suppose a Tort done to him ; otherwise per Skin. in a

Writ de muro reparando. 7 H. 4. 8. And yet by Thuring, if the Plaintiff recover in this Writ, he shall not distrain, pro non reparando, Quare & Vile. 7 H. 31. If the Defendant has nothing in the Land, by Reason whereof he ought to repair, except in Right of his Wife, the Writ shall abate against the Husband only.



*Et catalla tunc ibid' rationabilem Distinctionem super ipsum fac' potuisset, distrinxit, Et palfridum illum diu malitiose detinuit, per quod negotia sua ardua, pro quibus transitum suum præd' fecerat, perierunt ; Et alia, &c.*

**A** And if a Man promise and take upon him to make for another Man <sup>3 H. 6. 36. b.</sup> certain Carts for Carriages, or other Thing, and taketh Money before-<sup>&c.</sup> hand for to do the same, and afterwards he doth not make them according to the Promise and Undertaking; the other may have an Action upon the Case against him, and the Writ shall be such :

*Si W. &c. tunc pone I. &c. ostens. quare cum idem I. tres currus pro victualibus Et heredes ipsius W. ad partes transmarinas ducend' pro (a) certa pecuniæ summa, cujus unam part' præ manibus recepit, infra cert' termin' inter eos concord' facere Et fabricare apud S. assumpsisset ; idem I. currus præd' infra terminum præd' facere Et fabricare non curavit, per quod idem W. diversa bona Et catalla sua ad valenciam C. marc' quæ in curribus præd' duci debuissent, pro defectu cur' præd', totaliter amisit ad grave dampnum ipsius W. ut dicitur : Et habeas, &c.*

**B** And if a Man be lodged in any Inn, and any of his Goods be <sup>42 E. 3. 11.</sup> taken or Stolen from thence by a Stranger, he shall have an Action upon <sup>4 E. 6. 9.</sup> the Case against the Inn-keeper, and the Writ shall be such : <sup>22 H. 6. 21.</sup>

*Rex Vic', &c. Si A. fecerit, &c. tunc pone, &c. B. quod sit, &c. ostens. &c. quare cum secundum Legem Et cons. regni nostri Angl' hospitatores, qui hospitia (b) communia tenent, ad hospitand' homines per partes ubi hujusmodi hospitia existunt transcentes, Et in eisdem hospitantes, eorumque bona infra hospitia illa existentia, absque subtractione custodire die ac nocte tenentur, ita quod pro defectu ipsorum hospitatorum seu servientium suorum hospitibus hujusmodi dampnum non eveniet ullo modo : Quidam malefactores quendam equum ipsius A. pretii x l. s. infra hospitium ejusd' B. apud S. hospitati, inventum pro defectu ipsius B. ceper' Et abdux', Et alia enormia, &c. ad grave dampnum, &c. Et habeas, &c. Teste, &c.*

**C** If a Man do sell unto another Man a Horse, and warrant him to be <sup>9 H. 6.</sup> found and good, &c. if the Horse be lame or diseased, that he cannot <sup>Action sur le</sup> work, he shall have an Action upon the Case against him. <sup>Case 15.</sup>

And so if a Man bargain and sell unto another certain (c) Pipes of <sup>Sec 9 H. 6.</sup> Wine, and warrants them to be good, &c. and they are corrupted, he <sup>52. 11 H. 6.</sup> shall have Action upon the Case against him. <sup>18.</sup>

But

(a) See this Writ abated, for that it lies only on a Fact, and there was no Consideration mentioned in the Writ. <sup>2 H. 4. 3.</sup> accords, because such Action on the Case lies only for a Misfeasance, but not for a Nonfeasance, because the Default is to be specified in <sup>11 H. 4. 33.</sup> 'Tis debated, whether the Action lies, and whether he ought to declare in certain, what he ought to have on the Agreement for his Labour. <sup>3 H. 6. 36. 14 H. 6. 18. 19 H. 6. 49.</sup>

(b) See <sup>2 H. 4. 7.</sup> He ought to shew in his Count, that the Defendant is a common Host or Inkeeper, otherwise all will

abate. <sup>1 H. 4. 45.</sup> 'Tis there said, &c. that tho' the Host or Inkeeper delivers the Keys to the Guest, it does not discharge him. See *Dyer* 158. the Host excused for that he refused to receive the Plaintiff on a reasonable Cause. See for Remedies against Hosts, who refuse to harbour Guests. <sup>18 H. 7. Kelw. 50. Dyer 158. 5 E. 4. 2. 42 Aff. 17. 11 H. 4. 45. 22 H. 6. 21. and 39, &c.</sup>

(c) Yea, tho' they were sold by a Servant, <sup>9 H. 6.</sup> and there it seems that Action on the Case lies without any Warranty ; so is <sup>7 H. 4. 14. and Sec 11 H. 4. 6.</sup> where

9 H. 6. 13.  
contr. Post.  
98. K. Dyer  
75.

But note ; It behoveth that he warrant it to be good, and the Horfe to be found, otherwise the Action will not lie. For if he sell the Wine or Horfe without such Warranty, it is at the other's Peril, and his Eyes and his Taste ought to be his Judge in that Case. 26 H. 6. 35.

24 H. 6. 10.  
45 E. 3. 19. But if a Smith prick my Horfe with a Nail, &c. I shall have my D Action upon the Case against him, without any (a) Warranty by the Smith to do it well. And the Writ shall be, *Quare quendam clavum in unum pedem cujusdam equi J apud N. fixit, per quod putridus devenit, sic quod idem equus per magnum tempus laborare non potuit, & idem J. profic' equi sui præd' per idem tempus amisit, ad dampn', &c.* For it is the Duty of every Artificer to exercise his Art rightly and truly as he ought. (b)

2 Inst. 4. And if any Sheriff or Under-Sheriff do distrain any Parsons or Vicars, or other Spiritual Persons, in any Lands whereof they are possessed in the Right of their Churches, they shall have Actions upon the Case against the Sheriff in this Form :

*Rex, &c. Si A. persona Ecclesiæ de C. fecerit, &c. tunc pone, &c. B. Vic' nostrum Somersf. & C. Subvic' nostrum ejusdem Com' quod sint, &c. ostens. quare cum in articulis cleri regn' nostri per dominum E. nuper Regem Angl' progenitor' nostrum concessis inter alia continetur, ne ministri nostri, ut Vic' aut alii, cap' animalia rector' Ecclesiarum pro districtibus aliquibus in via Regia, nec in feod' in quibus Ecclesia ill' olim fuer' dotata ; præd' Vic' & Subvic' averia præd' A. apud L. in feodo ipsius A. Ecclesiæ suæ præd' de quo eadem Ecclesia olim dotata fuit ceper' & ea abinde usque S. duxerunt, & imparcaverunt, & ea imparcata ibidem diu detinuer' contra legem, & consuet' regni nostri, & contra form' articulorum prædict' & contra pacem nostram. Et habeas, &c.*

7 H. 4. 44. If a Man ought to be quit of Toll for himself and his Tenant and F Men, in every Market or Fair, &c. Now if any Officer or Bailiff take a Toll

where one sells Clothes, and warrants them all to be of such a Colour, if they are there in View of the Buyer, tho' they are not all of such a Colour, an Action on the Case will not lie. But if they are in another Place, or are warranted to be of such a Length, a Writ on the Case lies ; if a Servant sells Clothes for his Master, and warrants them, an Action on the Case does not lie against the Servant on such Warranty, nor (as some held) against the Master, for he did not warrant them.

Note a Diversity between Selling corrupt Wines to Merchandize, for there an Action on the Case does not lie without Warranty ; otherwise, if it be for a Tavern or Victualler, if it prejudice any. See 19 H. 6. 49. accordant.

(a) See 14 H. 6. 18. So if he promise, and does not shoe my Horfe. 19 H. 6. 44. 48 E. 3. 16. Case against a Smith who refuses to shoe my Horfe. 21 H. 6. 55. 18 H. 7. Kelw. 50.

(b) If one retains Counsel, and gives him his Fee to assist him in the Purchase of such a Manor, if he becomes Counsel for another, or discovers his Counsel, Case lies ; yet tho' he warrants his Client that he shall have the Manor, but fails therein, yet if he does his Endeavour, Case does not lie ; for perhaps he could not have the Manor, i. e. 'twas impossible. 11 H. 6. 24. 55.

Trespass on the Case, for that the Defendant assumed to cure his Horfe, *Et quod ille tam negligenter & impravide, &c. medicinal', &c. quod Equus interit* ; 'twas held, (1.) If one who is not a common Farrier kills a Horfe by Medicines, without Doubt Case will not lie, without a special Promise. And (2.) Held in that Case by Newton and Arough, that there being no such Promise, Case would not lie, tho' he was a common Farrier, and so the Assumpsit is traversable. 19 H. 6. 49. Sed Vide contr. 48 E. 3. 6. 17 E. 4. 4. See 11 R. 2. Action sur le Case. 37, 39. 21 H. 6. 55.



a Toll of him, his Tenants or Men, he of whom the Toll is taken, shall have an Action of Trespafs upon the Cafe against him who took the Toll, or distrained his Goods for the Toll. And also he may have a Writ out of the Chancery directed unto the Bailiffs or such Officers, that they suffer them to be quit of Toll, &c. and he may have an *Alias* and a *Pluries*, and Attachment thereupon against the Bailiffs or Officers, if they do not obey such Writs, and the *Pluries* shall be returned into the Common Pleas or King's Bench.

G (a) If a Man hath a Manor within any Honour, and by Prescription hath had View of Frankpledge of his Tenants within his Manor, &c. Now if he or his Tenants be distrained by the Lord of the Honour, to come unto the Leet of the Honour, and to present there those Things which ought to be presented within the View of Frankpledge within the Manor, he who is distrained may have a general Action of Trespafs for this Distress, or he may have a special Writ directed unto the Bailiffs or Officers of the Honour reciting the whole Matter, commanding them that they suffer the Lord of the Manor to have and to hold his Leet of his Demefne, &c. as he hath used to do; and that they do not distrain him or his Tenants in any wise to come unto the Leet of the Honour, to present any thing which ought for to be presented in the Leet of the Manor; and also comprehending in the same Writ, that if they have taken any Distress for that Cause, that he then redeliver them, &c. And upon that he may have an *Alias* and *Pluries*, and Attachment against them, if they do not obey the aforefaid Writs.

[95.]

A And also if a Man hath used to have a Gulf of Water in any Water, and it hath been used that no other should make a Gulf in the same Water, between his Gulf and the Gulf of B. now if another doth make another Gulf betwixt them, he shall have his Action upon the Cafe in this manner (b). *Si A. persona Ecclesie de C. fecerit, &c.*  
R. de

(a) The Abbot of *Farnham* brought a Writ against the Sheriff of *Lancaster*, and counted that the King had granted to the Abbot's Predecessors and Successors, the Sheriff's Turn within the Lands of *Farnham*, so that neither the Sheriff or other Minister should intermeddle therein; and the Sheriff of *Lancaster* came to *Farnham*, and held his Turn within the said Lands, and caused the Men of the Franchise to present Matters Presentable, who presented Bloodshed by I. S. whereupon the said Sheriff distrained I. S. to come to his Turn of *Lancaster*, and then set on him a Fine of 100. And when he (the Abbot) delivered to the said Sheriff the King's Writ to surcease, and he did not, he then delivered him an *Alias*, *Pluries*, &c. And his Writ mentioned all this Matter, and that so the Defendant had entred into the Franchise to his Wrong, and in Contempt of the King and his Commands, and to his Damage, &c. and 'twas resolved. (1.) That

this Writ *tam quam*, &c. is good, and the King shall be answered therein. (2.) That where the Writ was *quo minus idem Abbas Turnum suum tenere possit*, it is well alledged, (tho' not said ousted thereof,) that he was disturbed in holding it; and so the Action lies, and a *Respondeas* awarded. *M. 14 E. 3. 17 E. 3. 56.* See Action on the Cafe for Disturbance of his Ferry. *22 Aff. 17.*

Trespafs by the Abbot of *Westm.* for disturbing his Bailiff to hold his View which he had by the King's Grant, &c. and 'twas agreed, that he need not shew the Charter in this Action, but in a *Quo Warranto*; wherefore the Defendant pleaded, that he and his Predecessors had a View there, *absque hoc*, that the Abbot had a View. *Trin. 16 E. 3.*

(b) But not for erecting a new Mill or School-house, which draws away all the Custom; *contra*, of a Ferry or Fair. *22 H. 6. 14.*

R. de T. &c. quare cum idem A. habere debeat, ipseque & prædecess. sui person' Eccl' præd' a tempore quo non extat memor' semper hætenus haber' cons. quend' gurgit' in aqua de W. in B. ita quod in ead' aqua inter gurgit' ipsius A. & gurgit' S. de E. Domini Man' de H. nullus aliquem gurgitem levare, palos seu claias figer' aut retia aliqua pro pisce inibi cap' ponere debeat, seu cons. aliquibus temporibus retroactis: Idem R. (a) claias & palos int' gurgit' præd' A. & S. in ead' aqua fixit, & retia pro pisce inibi capiend' posuit & ibidem piscatus fuit & piscem inde cepit & asport' per quod idem A. profic' gurgitis præd' ad valenc' C. s. amisit, & al', &c. Et habeas, &c.

And if a Man hath a Liberty to return Writs, and to execute them, **B** if the Sheriff *ex officio* enter into the Liberty, and execute any Process there, the Lord of the Liberty shall have an Action upon the Case against him; and these Writs do appear in the Register.

If a Man be found in Arrearages before Auditors, for which the Au- **C** ditors do commit him to the Gaol, and afterwards he escape from thence, now the Gaoler ought to pay the Money which was arrear upon the Account. And the Gaoler shall have his Action upon the Case against him who escaped to answer unto the King for the Escape; and to the Gaoler for the Damages which he hath sustained; the Form of the Writ is such:

Rex Vic' &c. Ex gravi querela A. accepimus quod cum B. compotum suum de tempore quo fuit Ballivus C. in N. eidem C. infra libertat' de K. nuper reddiderit: Et idem B. pro arrearagiis compoti illius per auditores ejusdem compoti postmodum arrestatus, & prædict' A. custod' gaol' nostræ libertat' præd' liberatus fuit, in eadem gaola custodiend' quousque præd' C. de arrearagiis prædictis juxta formam statuti de hujusmodi receptoribus & ballivis provisi plene satisfaceret, prædictus B. a custodia prædict' A. prædicto C. de arrearagiis prædict' non satisfacto, contra pacem nostr' evasit, occasione cujus evasion' idem A. præfato C. de arrearagiis illis juxta formam statuti prædicti plene satisfecerit, in ipsius A. damnum non modicum & gravamen. Et quia transgr' illam, si talit' perpetrata fuerit, relinquere nolumus impunitam, Tibi præcipimus, quod si prædict' A. fecerit te secur' tunc prædict' B. per corpus suum attachias, ita quod cum habeas coram nobis, &c. ad respondend' nobis de evasione prædict' & prædict' A. de damnis que sustinuit occasione evasionis illius. Et habeas ibi hoc Breve, &c.

And if a Man play with another at Dice, and he hath false Dice with **D** which he playeth, and gets the other's Money with these false Dice, he who loseth his Money, may have his Action upon the Case for this Deceit, and the Form of the Writ is such:

Rex Vic' &c. Si A. fecerit, &c. tunc pone, &c. T. de D. &c. quod sit, &c. ostens. quare cum idem T. de D. machinans ipsum A. subdole defraudare, & diversis pecuniar' summas de eodem A. extorquer' eund' A. ad ludend' ad talos cum ipso T. ad quendam jocum vocat' le Dozen, pro divers. pecuniar' summis apud Burton super Trent, excitasset & procurasset, ac idem A. cum ipso T. ad talos ad jocum prædict' ibid' lussisset, præd' T. quosdam talos venient' titulat' eidem A. tradidit ad jactandam, & cum tali præd' ad manus ipsius



*ipsius T. devenire contigissent, idem T. quosdam alios talos falsos & subdole titulos, quos numerum duodenarium, & non alium quolibet jactu attingere scivisset, falso & fraudulent' projecit, per quod idem A. magnas pecuniar' summas eidem T. ad jocum illum amisit, ac idem T. summas illas sub colore lucri falso & deceptivo cepit & asportavit, ad dampnum ipsius A. 5 li. ut dic' & habeas ibi nomina pleg' & hoc Breve. Teste, &c. and this Writ was sued Anno 5 E. 4. which see in the Register, 240.*

And although that the Defendant doth not entice the Plaintiff for to play, yet if the Defendant play with false Dice, &c. by which he gets the Plaintiff's Money ; it seemeth the Plaintiff may maintain this Action well enough, because the Enticement is not the Cause of the Action, but the Casting of the false Dice, by which he gaineth the Money, &c.

### Writ de Disceit.

**E** THIS Writ (a) lieth properly where one Man doth any thing in the Name of another, by which the other Person is damnified and deceived ; then he who is so damnified shall have this Writ, and the Writ is without the Words *vi & armis*, and the Writ is such :

Vid. Long.  
5 E. 4. 40.  
18 E. 2.  
Disceit 41.  
This Writ  
cannot be

sued by Attorney. 19 H. 6. 50. it shall not abate for Form, if it hath Matter of Substance.

*Rex Vic' Lincoln' salut. Si A. fecer', &c. tunc pone, &c. P. &c. ad resolvend' tam nobis quam præfat' A. quare quod. Breve nostrum per fin' 20 s. ad opus nostrum per breve præd' capiend' nomine prædict' A. hoc penitus ignorant' fraudulent' & malitiose in Cancellar' nostra impetravit, in deceion' Curie nostr' ad grave damnum ipsius A. Et habeas ibi nomina pleg' & hoc Breve, &c.*

26 E. 3. 65.  
Disceit 58.  
The King  
shall have  
this Writ,  
if no other  
will sue it,

because it is penal. 19 H. 6. 44. So if a Man levy a Fine, confess an Action or a Recog. or Statute, or appear as Vouchee in my Name.

By which it appeareth, That if a Man do purchase a Writ in my Name, for which Writ I ought to pay a Fine in the Chancery, as the

Bro. Finepur  
Contempt  
63.

F f

Course

(a) And Note ; Such Writ lies notwithstanding the Record on which 'tis founded be cancelled or avoided before. See 17 E. 3. 12. §. 1.

If one answers for another as Attorney without any Warrant, the Defendant may move this pending the Plea ; but if Judgment be given, he is put to his Writ of Disceit against the Attorney, and he shall recover Damages ; and if the Defendant (Plaintiff) was Party to the Disceit, he shall have the Writ against both, and recover. 21 E. 3. 45. by *Thurning*.

A. brought a Writ of Disceit against B. for that he had sued an original Writ of Debt, and three *Capias's* in the Name of

C. without his Assent against A. whereby A. was vexed, and put to Costs ; the Defendant, as to the Original, pleads the Consent of C. and as to the *Capias's*, pleads an Award. 'Twas moved, that the last Plea might go to the Whole ; for A. was not damaged by suing of the Original, so no Action lies for that ; yet by the better Opinion, seeing that was the Beginning of the Tort, he shall answer it. 7 H. 6. 43.

See *Mich. 38, 39 Eliz. inter Gellibrand and Hubbart, Moor's Case, 866.* in the Star-Chamber, agreed that if one levies a Fine in another's Name, a *Vacat* thereof shall be entred on the Roll. See divers Precedents there-cited accordingly.

19 H. 6. 44.  
7 H. 6. 33.

Course there is for every Writ of Debt of the Sum of 40*l.* or more, to pay for every Writ of 40*l.* 6*s.* and 8*d.* and if it be of 100 Marks 6*s.* 8*d.* And so for every 100 Marks 6*s.* 8*d.* and so for every Writ of Plea of Land, which is *Præcipe quod reddat*, if it be not a Writ of Right Patent, for every Writ which is of the yearly value of 5 Marks 6*s.* 8*d.* &c. and so according to that Rate. And then if a Man purchase such a Writ in my Name, and I know not thereof, I shall have this Writ of Disceit.

And if I do present one unto a Church whereof I am the Patron A unto the Ordinary, and one *T.* doth disturb me, for which Disturbance another doth purchase a *Quare impedit* in my Name returnable in the Common Pleas against the said *T.* I not knowing thereof, and afterwards causeth the Writ to abate, or me to be Nonsuit in that Writ, I shall have this Writ of Disceit against him who purchased that Writ, &c.

19 H. 6. 44.  
If a Man  
make an  
Obligation  
in my Name,  
I shall not  
have Dis-  
ceit, because  
I may plead  
*Non est factum.*

If one forge a Statute-Merchant in my Name, and sueth a *Capias* B thereupon, for which I am arrested, I shall have this Writ of Disceit against him that forged it, and against him who sued forth the Writ of *Capias*, &c.

If a Prior or Abbot have Title to present unto a Vicaridge where- C of they are Parsons imperfonce and Clerks secular or Regular at their Wills; and afterwards another doth forge a Grant in the Name of the Abbot or Prior under their Covent-Seal, that they do grant to one of the Parishioners, &c. that they shall present a secular Person and not a Regular, as a Canon or such, &c. the Prior or Abbot may have a Writ of Disceit, and the Form shall be such:

*Si Prior Bartholomæi de suburb' Lond', &c. ponite W. & B. &c. quod sint coram nobis, &c. in octabis Sancti Martini ubicunque, &c. ostens' quare quum idem Prior personam secularem vel regularem idoneam ad vicariam sancti Sepulchri extra muros Lond', quam quidem Ecclesiam idem Prior tenet in propriis usib', pro voluntate sua presentare debeat, & hactenus consuevit, prædict' W. & B. collusione inter eos pr locuta prædict' Priorem malitiose prægravare machinantes, sigillum commune prioratus prædicti contrafecerunt, & quasdam literas patentes, per quas prædecessores præd' prioris concessisse debuer', idem Prior & Covent' loci pr d' personam secular' & non alium, ad vicar' illam presentare deberent, cum eodem sigillo contrafacto consignari fec', & literas illas sigillo præd' consignatas in quadam causa ad instantiam ipsius W. tunc' Paroch' Eccles. pr d' inter ipsum W. & præf. Prier' coram Officiali Cur' Cant' Christianit' super motione frat' R. de F. canonic' præd' Prior' ad presentat' suam ad vicar' præd' per Episc' Lond' admissi meta exhibuere, & ipsum Prior' labore & expensis virtute literarum præd' diversimodo in hac parte fatigari procurar' in ipsius Prioris dispend' non modicum & gravamen. Et habeas ibi nomina plegiorum, & hoc breve, &c. Post.*  
98. N. 22 E. 3. 11.

And if a Man be Attorney for another in a Plea real against the De- D mandant, and afterwards by Covin between the Attorney and the Demandant, the Attorney makes Default, for which the Land is lost, the Tenant who lost the Land shall have a Writ of Disceit against the Attorney, and the Writ shall be such:

*Ostens'.*



*Offens. quare quum idem A. præf. R. in loquela quæ fuit coram eisdem Justic' nostris per breve nostrum, inter K. petent' & præf. tenent' de 20. acris terræ cum pertin' in C. attorn' suum coram nobis fecisset ad lucrandum vel perdend' in loquela præd' præf. B. collusione inter ipsum & præd' C. habita, se ad quend' diem per præf. Justic' in eadem loquela in banco præd' præfixum gratis absentaverit, per quod idem A. pro defectu ipsius B. terram præd' per considerationem cur' nostræ amisit, in deceptionem ejusdem cur' nostræ in ipsiusque A. grave damnum, & exheredationis periculum manifestum. Et habeas, &c.*

**E** And if an Action of Trespass be brought against many, and the Plaintiff and one J. by Covin between them cause certain Persons to come into Court and say, that they are the same Defendants, and that they make the said J. their Attorney, and afterwards the said J. as Attorney for the Defendants pleadeth unto Issue, and afterwards suffer the the Enquest to pass by Default, by which the Plaintiff doth recover against the Defendants: Now those who are the true Defendants shall have a Writ of Disceit against J. who appeared as Attorney for them, &c. and the Writ appeareth in the Register.

And so if R. doth recover in an Assise against W. certain Tenements and Damages, and because W. hath nothing in the same County to levy the Damages, R. removeth the Record of Assise into the King's Bench or Common Pleas, to sue forth Process thereupon, and to have Execution of the said Damages recovered, for which the said W. to defraud the said R. of his Execution, sueth forth a Writ to remove the Record in Chancery, surmising that he will have an Attaint thereupon before the Justices of Assise, &c. by which the Record is removed into the Chancery, and delivered to the said W. to carry to the said Justices of Assise, whereupon he may sue his Attaint. Now if the said W. will not sue forth the Attaint, but delay him, to oust him of his Execution, R. who recovered shall have a Writ of Disceit against him upon the Matter, which appeareth in the Register.

**A** One I. de A. sueth a *Præcipe quod reddat* against C. and T. his Wife, who plead a Fine levied to the said T. by one F. and Margaret his Wife, Mother of the Demandant, &c. and the Defendant saith, that his Mother's Name is Margery and not Margaret, and after Day is given by the Court, at which Day C. and his Wife procure and cause a Stranger to come into Court, and confess the Fine as the Tenant hath pleaded, by which the Demandant is barred, the Demandant shall have a Writ of Disceit against the said C. and T. his Wife as appeareth by the Register. But it seemeth, that if Margery do levy a Fine of her Land by the Name of Margaret, that she (a) and her Heirs shall be

5 E. 4. 40.  
B. confess. &  
avoid. 40.  
where a Man  
levieth a  
Fine of my  
Land in my  
Name, I may  
confess and  
avoid the

same, as to say that another of the same Name levied the same; without that that I levied the same; for I shall not have Disceit; by *Littleton* and *Danby*.

F f 2

concluded

(a) See accordant 13 E. 3. *Estoppel* 231. Reversion on an Estate for Life, which he  
1 Aff. 11. 3 Aff. 4. where one granted a leased by the Name of Gilbert filius Ste-  
phani,

concluded to say, that she hath another Name. But the Tenant may plead, that she by the Name of *Margaret* did levy a Fine of her Land, &c. and that hath been done where a Woman had to her Name *Agnes*, and she levieth a Fine by the Name of *Anne*, it hath been awarded good, and shall bind her and her Heirs, and shall be pleaded, that she by the Name of *Anne* levied the Fine.

20 H. 6. 10. and the Writ was brought where he was at the Time of this Protection.

44 H. 3. 4. If a Man sueth a Protection, and doth not go, this Writ lieth; contrary, if he go, though he presently return.

If a Man sue a *Præcipe quod reddat* against divers Tenants, and they B purchase a Protection for one of them, surmising that he is beyond the Seas upon the King's Service, whereas he is and always hath been remaining in *England*, by which the Demandment is delayed: The Demandant shall have a Writ of Disceit against the Tenants for that Delay, and the Writ shall be such:

*Si A. fecerit, &c. tunc pone B. & C. &c. quod sint coram, &c. ad respondendū tam nobis quam A. quare cum idem A. in Curia nostra coram Justic' nostris de banco implacitasset (a) per breve nostrum prædictos B. & C. de tribus partibus Manerii de S. cum pertin' iidem B. & C. Cur' nostræ ac legi & consuetudini Regni nostri Angliæ manifeste illudend' & prosecutionem prædict' A. in hac parte prorogat' machinando ad quendam diem partibus prædict' in eadem loquela coram præfatis Justic' præfixum quasdam litteras nostras de protectione continent' ipsum C. ad partes transmarinas in obsequio nostro tunc profecturum fuisse, & ipsum sic quietum esse de omnibus placitis & querelis except' placitis de dote unde nihil habet, & Quare impedit, & ass. novæ disseisinæ, & ultimæ presentationis, & attinctæ, & exceptis loquelis quas eorum Justic' nostris itinerantibus in itineribus suis summon' contigerit, coram præfatis Justic' porrigi fecerint, ipso (b) C. tunc, post & antea in Ang' continue commorante, per quod loquela illa coram præf. Justic' remansit sine die, in nostri contemptum manifestum, & deceptionem Curie nostræ præd' ac legum & consuetud' præd' illusionem manifestam, necnon ipsius A. dispend' non modicum & exhered' periculum manifestum. Et habeas ibi, &c.*

In

phani. In a *quid Juris* clamat against the Son of the Lessor, he pleads, that his Father's Name was *Richard Fitz-Stephen*, &c. whereby there ought to have been an Attornment to the Grantee, *cumque hoc*, that G. and G. named in the Note, &c. are one and the same Person, and thereon the Tenant went without Day, i. e. the Plaintiff was Nonsuit; yet it was agreed, that the Reversion passed. 11 E. 3. *Quid Juris* 2. 9 E. 4. 42.

(a) See such Writ of Disceit brought for purchasing a Protection, *quia moratur*, and laid in the County where the Protection was, and it may be in the County where the *Moration*, or Abiding was, *per Cur'*. 20 H. 6. 10. the Abbot of *Selby's* Case, with-

out shewing either in the Writ or the Count, the Date of the Protection. 20 H. 6. 18.

(b) But 'tis a good Plea to say, that the Malady took or seized him going, &c. so that he could not go, &c. 18 E. 3. 12. See such Writ brought against one who purchased a Protection, *quia Moraturus*, whereas he was not at the Time of the Protection cast, remaining in *obsequio nostra*, *sed apud B. &c. proprii negotii intendendo*, the Defendant shews his Detainer and Safeguard to *Calais*, and that he returned by the Lieutenant's Command to buy Victuals, &c. *absque hoc*, that he was intendant *propriis Negotiis*. 20 H. 6. 24.



**C** In a *Præcipe quod reddat*, if the Sheriff return the Tenant summoned where he was not summoned, by which the Defendant loseth his Land by Default at the *Grand Cape* returned, the Tenant shall have a Writ of Disceit against him who recovered, and against the Sheriff for his false Return, and by that Writ the Tenant shall be restored unto his Land again. And it seemeth the Tenant shall have this Writ after Judgment given for the Demandant against him that recovered before any Entry or Possession: For if the Tenant shall not have a Writ of Disceit before the Demandant doth enter, then perhaps the Demandant will not enter, until the Summoners in the *Præcipe quod reddat*, and the Summoners, Viewers and Pernors in the grand Cape (a) are dead, and then he shall not have a Writ of Disceit after their Deaths; for whether he were summoned or not shall be tried by the (b) Summoners and Viewers, and Pernors by examining of them. But see 3 E. 3. That the Tenant shall not have a Writ of Disceit before the Demandant hath entred; *Tamen quære*. And in a Writ of Disceit the Process shall be made against the Summoners, Viewers and Pernors to be examined thereupon, &c. And if the Demandant who recovered by false Return of the Sheriff, make a Feoffment of the Land, then the Writ of Disceit lieth against the Demandant who recovered, and against his Feoffee and the Sheriff, and if the Demandant who recovered be dead, and the Sheriff also, yet the Writ of Disceit lieth against the Demandant's Heir, and against him who is Tenant of the Land, if the Summoners, Viewers, or Pernors be living: But if the Summoners, Viewers, or Pernors be dead, then the Writ of Disceit is lost. But a Writ of Disceit lieth if any of the Summoners, Viewers, or Pernors be alive; for if they say that they did not summon him, then the Plaintiff in the Writ of Disceit shall recover his Land and shall be restored, &c. for it ought to be done by two (c) Summoners at the least, and two Viewers, &c. And if any of them do not that which is returned they ought to do, then the Writ is not executed as it ought to be, by which the Plaintiff in the Writ of Disceit ought then to be restored, &c.

Post. 107. H.  
104. P.

3 E. 3. Dis-  
ceit 47.  
18 E. 2. Dis-  
ceit 54.

18 E. 4. 11.  
38 E. 3. cont.

35 H. 6. 46.

1 E. 2. Dis-  
cent 48.

And

(a) But yet he shall have Case against the Sheriff. 1 H. 6. 1. and recover Damages. 6 E. 4. 3. Note; If in this Writ the Sheriff returns the Party warned, where in Truth he was not, and Judgment is given that the Demandant shall have Restitution, he shall have this Writ against the Sheriff, and if the Disceit is found, recover Damages, but not defeat the Remedy had. 8 H. 6. 2. per *Shars*. for he cannot lose by the Default, but by the Disceit found he may.

(b) Note; The Process is a *Venire facias*, &c. and if the Summoners, &c. appear, but he who recovers, or the Party are not warned, the Summoners shall be examined, and a *Distingas* shall issue; and if the Disceit be found, Judgment may be given instantly against them who made Default, without a *Distingas*, or Writ of *Scire facias*.

8 H. 6. 2. 50 E. 3. 18. or he may have a *Distingas*. 12 E. 3. 21. Note; He may have also a Writ of Disceit against the Party to the Recovery, &c. See 8 H. 6. 1. 30 E. 3. 49. So he may have it against the Party who recovers, or his Heir, and a *Scire facias* after the Disceit found, against the Tertenant. 18 E. 4. 11. 38 E. 3. 16. See 18 R. 2. *Discent* 49. 8 E. 3. 6. 8 H. 6. 2. 20 E. 3. 43. 8 H. 4. 24. *contr.* 38 E. 3. *contr.*

(c) And therefore if one of the Summoners says that the Summons was not made, and the other that it was made, the Demandant shall recover. 8 H. 6. 2. 50 E. 3. 17. So if one makes the Garnishment, and the other was on the Land at the same Time for the same Purpose, but says nothing, the Demandant shall recover. 5 E. 3. 65. 8 E. 3. 6. See 2 E. 3. 21.

And in a *Scire facias* to execute a Fine, if the Sheriff return the Tenant D summoned by two Summoners, if it be not true, yet the Tenant by the Return shall lose the Land, for Execution shall be awarded upon the Return if the Tenant do not appear, and then the Tenant shall have a Writ of Disceit against the Sheriff, and him who had Execution, and him who is Tenant, and shall be restored to the Land (a).

Post. 98. R.  
99. H.

And so if a Man (b) sue a *Scire facias* upon a Recognisance of Debt, and the Sheriff return the Defendant summoned where he is not summoned, for which the Plaintiff hath Execution awarded, the Defendant shall have a Writ of Disceit against him who had Execution, and the Sheriff shall be punished by this Writ for his Falsity, and the Party who recovered shall make Restitution of that he recovered, &c. (c)

And

(a) *Contra per Juine*. He shall recover only Damages, and for that it shall be tried by the Enquest. 1 H. 6. 5.

(b) See *Rot. Parl.* 21 E. 3. nu. 25. A Petition for a Writ of Disceit in the like Case.

Note; A. brought a *Scire facias* against B. upon a Fine, whereby the Tenements were rendered to B. in Tail, Remainder to C. &c. the Tenant pleads that the Queen had a Writ of Disceit pending, to reverse the Fine; for that the Tenements were Parcel of her Manor of D. which is antient Demesne, and that she held the Manor for Life by a Lease from the King, and thereupon Day was given to the Parties. And now the Queen's Attorney (and B. the Tenant) appears, who says, That he knows nothing why the Fine should not be reversed. And now A. *ex gratia Curie* was received to answer, wherefore the Tenant did not deny, &c. and he demanded Judgment of the Writ. (1.) For that A. and C. to whom the Estate is limited by the Fine are not made directly Parties to the Writ; *sed non allocatur per Cur'*, who said, That this Writ is good, and shall be always brought against the Tertenants. (2.) That the Queen had nothing in the Manor, nor had at the Day of the Writ purchased; for she had demised it before. —*Wilby*. This Suit is given to the King, but that is where no other will sue; will you say any Thing else. And then he shewed an Amerciament and Fine, and also an antient Recovery of the same Tenements, in an Action tried at Common Law, *Jedd*. Seeing by this antient Fine and Recovery, the Tenements are become Frankfee, and pleadable here; *Queve*, if they should now be received, to reverse the late Fine, without suing to reverse the former Fine and Recovery, which are still

in Force: And for that he was a Stranger to the Fine, and also to the Suit, and did not shew it *sub pede sigilli*, and a Writ to allow it: Therefore by *Wilby* it is no Plea; for on a *Nient comprise* pleaded, it cannot be tried between the Parties. 26 E. 3. 66. And so Note, That a Fine of elder Date will hinder the Reversal of a Fine of later Date by a Writ of Disceit, but not *e converso*. See 21 E. 3. 25, 26. acc.

(c) And also the Issues in the mean Time. *Mik.* 16 E. 3. But not Damages. 18 E. 3. 28. And note; The King shall have the Issues in Disceit, on a Recovery by Default on a *Præcipe*. 29 E. 3. 34. See 8 H. 6. 2. 41 E. 3. 2. 10 E. 3. 18. That he shall recover all in Damages against the Sheriff, see the Fine avoided between the Parties, for that the Court had not Jurisdiction thereof. 9 H. 7. 12. and 8 E. 4. 6. per *Littleton*.

And note; In a Writ of Disceit on a Fine levied of such and such Lands, &c. and Error brought in B. R. the Transcript of the Fine was removed thither; and the Court being apprised by the Record, that the Manor (of which the Lands were alleged to be Parcel) was — and by the Conufance on the Defendant's Part, or otherwise by *Verdict*, that it was Parcel of the Manor; Judgment was given that the Fine be reversed; and yet by Force of this Process, and for that other Lands were rendred by the Fine, the Fine was not taken off the Files, but only marked *quoad* those Lands. 21 E. 3. 20. 17 E. 3. 31. But note, that he who is Tertenant, ought to be made Party by the *Scire facias*; for the Conufance of him who is Party to the Fine, shall not bind the Tertenant, if the Lands are (not) antient Demesne. 7 H. 4. 44. 8 H. 4. 29. See also in Disceit by the Queen, on a Fine levied of



- A** And if a Man levy a Fine at the Common Law unto another of Land which is in antient demesne, the Lord of antient demesne shall have a Writ of Disceit against him who levied the Fine, and he who is Tenant shall avoid the Fine, and there he who ought to give the Land shall be restored unto his Possession and Title which he hath given by the Fine, because the Fine and Gift thereby is avoided. But if he who levieth the Fine, have after by his Deed released unto him who hath the Possession by the Fine or by the Deed, confirm'd his Estate in the Land, then he unto whom the Release or Confirmation is made, shall have and keep the Land notwithstanding that the Fine be avoided, because that Release or Confirmation made unto him being in Possession, hath made his Estate firm and rightful, against him and his Heirs who released or confirmed the same. [98.] 35 H. 6. 46. 8 E. 4. 6. cont. Where a Man loseth by *Præ ipe* in *Capite*, where he ought to have sued in the Lord's Court, and the Lord brought Disceit for the Profits of the Court.
- B** If a Man do recover in a Writ of Waste where the Tenant was not summoned, &c. the Defendant shall have a Writ of Disceit, and shall be restored. *T. 9 E. 3.* See 17 *E. 3.* 58. 29 *E. 3.* 42. 29 *E. 3.* *Disceit* 63, and 56. 48 *E. 3.* 20. 17 *E. 3.* 18. 20 *E. 2.* *Disceit* 5. acc. 19 *E. 3.* *Disceit* 3.
- C** If Husband and Wife lose the Land of the Wife by Default, they may sue a Writ of Disceit, and if the Husband dieth, it seemeth the Wife may sue a Writ of Disceit to be restored to her Land, &c. or have a *Cui in vita* upon the Statute at her Election; and the Writ of Disceit shall be directed unto the same Sheriff who did the Disceit, and false Return, and not upon the Coroners, as appeareth, *Trin. 20 E. 3.* Yet it seemeth it is not Error, if it be directed unto the Coroners, &c. 20 *E. 3.* *Disceit* 4. 19 *E. 2.* *Disceit* 56. 20 *E. 3.* *Disceit* 4. he shall not have Disceit, by *Wilby*. Hill. cont. 20 *E. 3.* *Disceit* 5.
- D** (a) And in a Writ of Disceit, if the Sheriff return one Summoner dead, yet the other Summoner shall be examined, &c. And if it be found that he did not summon, &c. the Party shall be restored unto the Land, and so if one Viewer, or Pernor did not do that which he ought to do, the Party shall be restored, because it ought to be done by both, &c. But if Summons be by four Men, as long as two of them be alive, the Tenant who lost may have a Writ of Disceit. 8 H. 6. 1. 18 *E. 4.* 1.
- E** And a Writ of Disceit lieth against him who embezileth a Writ, and also against him who procureth another to embezel a Writ, if it be embeziled, &c. and they may be joined in the same Writ. See 19 *H. 6.* 29, 50, 72. 9 *H. 6.* 5. 8 *H. 6.* 20, 50. 19 *H. 6.* 29, 50, 71.

And

of Lands in antient Demesne; and by the Transcript it appears, that the Lands were reddred in Tail to *A.* Remainder to *B.* in Tail, &c. and a *Scire facias* sued against the Tertenants (which seem to have been the Issue of *B.* in Tail, but was not so supposed by the Writ) who acknowledge the Lands (except eight Acres which were Frank fee); and *Thirring* would not avoid the Fine, till those in Remainder were made Parties by *Scire facias* 21 *E. 3.* 56 but it is sufficient. Fine Tertenant only be made Party to a Writ. 6 *E. 3.* 66 *Note*; By the Case above said, it appears it

is in the Plaintiff's Election to bring a Writ of Disceit against the Conusor of the Fine and the Tertenant or otherwise to bring it against the Conusor alone, and to have a *Scire facias* against the Tertenants; *quod Nota*; and so it is in Disceit on a Recovery for Non summons, &c. See 38 *E. 3.* 1. See 1 *Latw.* 712. 18 *E. 4.* 6. 36 *H. 6.* 34 *contr.* 17 *E. 3.* 31. *contr.* See 10 *Co.* 50. a. 2 *R. 3.* 21. 15 *H. 7.* 12.

(a) So in Waste, where the Writ issued to the Sheriff who found the Waste, by *Lifer.* 30 *E. 3.* *Disceit* 5. See 8 *H. 6.* 2. 8 *E. 3.* 6. 8 *H. 6.* 5. 35 *H. 6.* 46.

20 H. 6. 34.  
16 E. 4. 9.

And if a Man doth bargain with another to enfeoffe him (a) of certain Lands, and afterwards he enfeoffe another Man, he with whom he made the Bargain shall have a Writ of Disceit. (b)

26 H. 6.  
Disceit 15.  
27 H. 6. 5.  
vid. 34 E. 3.  
Disceit 57.  
Neither the  
Clerk nor  
the Def.  
ousted.  
9 E. 4. 33.  
Lit. ac.

(c) And if a Man do recover in a *Quare impedit* by Default, &c. if the Defendant be not summoned, he shall have this Writ, and the Summoners and Pledges upon Attachment shall be examined thereupon. And if the Disceit be found, he shall have Writ unto the Bishop, &c. for him.

If an Action of Debt be brought against two as Executors, where one of them is not Executor, if he who is not Executor confesses the Action, he who is Executor shall have a (d) Disceit against him and recover as much in Damages.

10 E. 4. 9.

If an Attorney be not informed by his Client to plead in any Action, I and he plead, *Quod ipse non est veraciter informatus, & ideo nullum responsum*, &c. the same shall be entred to save him of Damages in a Writ of Disceit brought against him by his Master, &c.

11 E. 4. 6.

5 H. 7. 41.

If a Man sell Cloaths, and warrant them to be of a certain (e) K Length, if they be not of such Length, he who bought them shall have a Writ of Disceit against him upon his Warranty, although the Warranty be only by Word; but if the Warranty be made at another Time after the Bargain made, then it ought to be in Writing, otherwise he shall not have an Action upon that Warranty; for he shall not have an Action of Disceit therefore, if the Warranty be not made upon the Bargain and at the Time of the Bargain.

9 E. 5. 7.

The Writ of Disceit ought to be brought into the County where the Disceit is supposed to be done.

8 E. 4. 6.

If a Man recover in a *Præcipe in Capite* by Default, where the Lands M are not holden of the King, nor he hath not the Lord's License to sue in the Common Pleas, the Lord shall have a Writ of Disceit, and (f) recover Damages; but the Recovery shall stand in Force, and the Lord shall have the Seignior, and he who recovered shall also hold over the King by way of Estoppel. (g)

IF

(a) So if he grant a Rent-charge, or acknowledges a Statute, and after re-enfeoffs according to an Agreement; or if he makes a Feoffment to another, and after re-enters and infeoffs another, and the first Feoffee enters. 20 H. 6. 34, 35. Note here, it was a Bargain without a Deed.

(b) See 16 E. 4. 9. 3 H. 7. 14. 21 H. 7. 41.

(c) But where the King recovers, the Party must sue by Petition to the King; and if he answers, *Let Right be done*, he shall have a Writ of Disceit; and if he answers, *Let the Disceit be examined*, then on that Indorsement they may proceed, but without Writ. 10 H. 4. 4. See 27 H. 6. 5. 26 H. 8. 34. 34 E. 1. Disceit 17.

(d) See 9 E. 4. 13. 21 E. 4. 24. 48 E. 3. 25. 11 H. 4. 84. 20 E. 4. 9, 51.

(e) Because it cannot be tried but by parol Proof; so if one warrants Wares to be of such Weight, &c. if found not to be of such Weight, &c. at the Time of the Warranty. 11 E. 4. 6. 13 H. 4. 1. and see by *Hankf.* 13 H. 4. 1. and *Choke* 11 E. 4. 16. If the Vendor warrants a Horse to be found, where he has a Defect that is apparent to the Senses, Disceit does not lie; *contra* by *Thirning*, if the Horse be not there present.

(f) But he shall not recover Damages as for Loss of a Seignior or Court; for the Seignior remains, and the Loss of the Court is only *pro hac vice*. 17 E. 3. 31, 37.

(g) See a Writ upon this Case. 17 E. 3. 59. *quare* 10 E. 4. 6, 37.



- N** If a Man procure another to sue an Action against me to trouble me, I shall have a Writ of Disceit. 1 Salk. 14, 15.  
3 Cro. 378.
- O** A Writ of Disceit shall be maintainable against the Attorney and the Sheriff, because they put a Writ of *Habere facias seisinam* upon the File of the Sheriff's Writ where they have not any Record to warrant it. 2 Inst. 2, 215.  
See 17 E. 3. 51.
- P** If a Man levy a Fine of Land in antient Demesne, and also of Land at the Common Law, the Party shall have a Writ of Disceit for the antient demesne Land, and shall avoid the Fine for that Land, and the Fine shall stand good for the Land at the Common Law. (a) 21 E. 3. 20.  
5 E. 4. 6.  
17 E. 3. 31.  
Disceit 37.
- Q** If a Man lose Land, by Default in a *Præcipe quod reddat*, (b) and dieth, his Heir shall have a Writ of Disceit as well as the Father, and shall have Restitution.
- R** If a Man have Execution by Default upon a Recognizance in a *Scire facias* sued out against another, and the Defendant dieth, his Executors shall have a Writ of Disceit and shall be restored, &c. If the Disceit be found that their Testator was not warned, there the Garnishers shall be examined, &c. 15 E. 3.  
Disceit 43.  
18 H. 2. ib. 50.  
Post. 99. H.
- S** And if a Man recover an Annuity, and afterwards sueth a *Scire facias*, and recovereth by Default, the Defendant shall have a Writ of Disceit if he were not warned. 18 E. 3. Disceit 42.  
[99.]
- A** And the Vouchee shall have a Writ of Disceit where he loseth by Default if he were not summoned, &c. 3 & 4 E. 3.  
Disceit 45.
- B** In a *Præcipe quod reddat* against the Husband and the Wife at the grand Cape, the Husband appeareth in Person, and the Wife appeareth by Attorney, who hath a Warrant which is insufficient, by which Judgment is given upon the Default of the Wife against the Husband and Wife, &c. yet they shall have a Writ of Disceit if they were not summoned, &c. 18 E. 2. Disceit 54, 55.
- C** And where a Man loseth by Default in a *Quare impedit*, or Waste, it behoveth that the Summoners and the Pledges upon the Attachment, and the Manucaptors upon the Distress shall be examined, when the Writ of Disceit is brought therefore. See in the Title of *Disceit* in the Abridgments for that Matter. 19 E. 2. Disceit 56.  
29 E. 3. 42.
- D** If a Man sue a Writ of *Monstravit* against another to account, &c. where he hath sufficient Lands in another County, by which he may be brought to answer by Writ of Account, the Defendant shall have a Writ of Disceit against the Plaintiff, who sueth the *Monstravit*, quod vi. Mich. 9 E. 2. Fitz. Disceit 52.
- E** If Tenant for Life loseth by Default where he was not summoned, and dieth; he in the Reversion shall not have a Writ of Disceit, because he shall not have a Writ of Error, if not by the Statute, &c. So 8 E. 3. 6. per *Parning*, clearly. Dyer 241. b.  
8 E. 3. 6. 52.

G g

If

(a) See 7 H. 4. 44. 17 E. 3. 31. 21 E. 3. 20. the Ancestor be not pleaded. 17 E. 3. 59, &c. 8 E. 3. 6. 18 R. 2. Disceit 30. & 50. 15 E. 3. Disceit 43. 8 E. 3. 62, 52. 8 H. 6. 2. 15 E. 3. Disceit 45.

(b) And the Parol shall not demur for Nonage of the Demandant, if a Deed of

- 1 E. 3. 5. So If a Man be Tenant for Life of a Manor in antient demesne, and the Tenant of that Manor doth levy a Fine of his Land at the Common Law, the Lord of the Manor who is Tenant for Term of Life, should have a Writ of Disceit, and after his Decease, he in the Reversion shall have a Writ of Disceit, and reverse that Fine. 17 E. 3. 58. *vide supra B.*
- 10 H. 4. 4. If the King doth recover in a *Præcipe quod reddat*, or in a *Formedon* F against another Man by Default, the Tenant shall have a Writ of Disceit as well as he shall have Writ of Error, where the King recovereth by erroneous Process, &c. or erroneous Judgment. See for this Matter, M. 10 H. 4. in Title *Traverse* in the Abridgments.
- 22 E. 3. Dis- And this Writ of Disceit shall sometimes issue out of the Common G  
ceit. Pleas (a), or he may sue it out of the Chancery if he will, as if a Man lose Lands by Default in a *Præcipe quod reddat* in the Common Pleas, the Tenant if he were not summoned, shall have a Writ of Disceit out of the Common Pleas, if he will, or out of the Chancery. *Vide ante* 98 R.
- 17 E. 3. 51. And so if a Man have Execution upon a Recognisance in the Com- H  
Disceit 39. mon Pleas, or King's Bench by Default, &c. the Defendant shall have a Writ of Disceit, if he were not summoned out of that Court where the Execution was sued, &c. or out of the Chancery at his Election.
- 17 E. 3. 51. And there are divers other Writs of Disceit, in the Form of a Writ I  
Disceit 9. of *Audita querela*, as if one sue a *Præcipe quod reddat* against another, and the Tenant is essoined at *Quind' Pasch'* which Essoin is adjourned until 15 *Trin.* the Term (b) following, and the Demandant and his Attorney by Covin betwixt them recovered a Writ in the File of Writs, that the Tenant hath made N. and M. his Attornies jointly and severally at the said *Quind' Pasch'*, by which the Demandant challengeth that Essoin, because he had Attorney in the Writ not essoined, by which at the Day of Adjournment the Essoin is quashed, and the Demandant recovereth the Land by this Default at *Quind' Pasch'*. Now the Tenant shall have a Writ of Disceit against the Demandant and his Attorney, and the Form of the Writ shall be in the Nature of *Audita querela*, and shall be directed unto the Justices of the Common Pleas, and is such :
- Rex Justic' suis de banco salutem. Monstravit nobis I. de B. quod cum W. de B. nuper implacitasset ipsum I. coram vobis in banco præd' breve nostr' de uno mes. &c. in B. & placit' præd' ad caption' inquisition' propriæ persequut' fuisset, diesque partibus prædict' a die Pasch' proxim' præterito, &c. in xv. dies dat' extitisset, ad quem idem I. se fecit essoniari, & esson' ill' adjudicat' fuit usque ad xv. S. Trin' tunc proxim' sequent' prædictq; W. & P. attorn' sui collusion' inter eos præhabita machinant' præf. I. de tenemento prædict' exbaredar' S. de F. servient' ipsius W. de B. & W. de P. attorn' ipsius I. ipso die penitus ignorante recordare & breve de attorn' in filaciis brevium in xv. Pasch' in banco prædict' & quandam calumniam supradict' esson' poni fecissent,*

(a) Note 3 Levin. 419. 22 E. 3. 11. contra. 1 s. l. ib. 51.

(b) See Disceit against one who cast an Essoin of the King's Service, and the Tenant. 12 H. 4. 24.



*fecissent, & esson' prædict' pro eo quod prædict' I. attorn' suum in eodem placit' habuit non jacere asseruisset, quod ad dict' xv. S. Trin' seifina de teneamento prædicto pro eo quod attorn' prædict' I. ad dictam quinden' Pasch' effoniatus non fuerit, quod eidem W. de B. per considerationem Curie extitit adjudicata, in deceptionem Cur' nostre prædict', & ipsius I. grave damnum, ac exheredationem manifestam, super quo idem I. per petitionem suam coram nobis & concilio nostro in parlamento nostro exhibitam, Nobis supplicavit, ut ei de remedio providere velimus in hac parte. Et quia prædict' W. de P. super præmissis coram vobis in banco prædicto allocutus ea cognovit ut dicitur, Vobis mandamus quod audita querela ipsius A. super præmissis, vocatisq' coram vobis tam præf. W. de B. & W. de P. quam S. de F. auditisq' hinc inde eorum rationibus, si per inquisitionem sic inde faciant, aut per recognitionem eorundum W. W. & S. vel eorum alicujus vobis constare poterit, quod I. teneamenta prædicta per collusionem prædictam amisisset, ut est dictum, tunc tam super deceptionem & collusionem prædictam quam super recuperationem teneamenti prædicti habend' tam pro nobis quam præfat' I. justitiæ complementum fieri faciatis, prout de jure fuerit faciendum. Teste, &c.*

**K** If a Notary or other Person of Covin counterfeited the Seal of any Parson or Vicar, and forge Letters of Resignation of his Parsonage or Vicarage, in the Name of the Parson or Vicar of his Benefice, he shall thereupon have a Writ of Disceit, and the Writ is in the Register. But whether by that he shall be restored unto his Benefice, *Quære*; it seemeth not, because the Removing of him is a Spiritual Act.

[100.]

**A** If two several Men come before the Mayor of the Staple, or before other Mayor of a Town, and there one acknowledgeth unto another 100 *l.* in the Name of another Man, affirming him to be such a Person, which in Truth he is not; for which the other Person is troubled, and sued upon the Statute, and taken in Execution, &c. he shall have a Writ of Disceit against the two Persons, &c. and shall recover Damages against them.

**B** And so if a Man be bounden unto a Prior by a Statute-Merchant in 40 *l.* to be paid at a certain Day, at which Day he payeth the Money unto the Prior, &c. and afterwards another Person in the Prior's Name, cause the Statute to be certified in the Chancery, and sue Execution thereupon, the Prior not knowing thereof, he who was bounden and hath paid the Money, shall have a Writ of Disceit against the Prior, and those who sued the Execution in his Name.

**C** If the Escheator, by Virtue of a Writ directed to him (a) doth seise into the King's Hands the Lands of any Person who holdeth of the King in Chief, by which the King commits the Wardship of those

Escheator.

G g 2

Lands

(a) See 9 H. 6. 6. an Office found before the Escheator *virtute brevis*: That one A. died seised of the Moiety of the Manor of D. and that B. is his Heir, and the Escheator returns the Office, that A. died seised of the whole Manor; and held, (1.) That B. may have an Action on the Case against the Escheator for this false Return; for the Commission does not make

him a Judge, he is only an Officer: But an Action on the Case does not lie against a Judge of Record. (2.) Seeing the Office found him seised of a Moiety only, his Returning that he died seised of the Whole, is sufficient to give the Action: And yet if the King has a Moiety, he shall have the Whole.

Lands unto another, who grants them over unto another during the Nonage of the Heir. Now if the under Escheator of his own Authority return another Officer without Enquest, &c. and disturbeth the Possession of the second Grantee, the second Grantee shall have a Writ of Disceit against the under Escheator: And so if the Escheator, of his own Authority have so done without taking any Enquest, &c. according to the Course of the Law; and these Writs are in the Register.

And thereby it appeareth, that an Escheator may have an under Escheator, as well as the Sheriff may have an Under-Sheriff.

And also it appeareth, that an Escheator shall be punished, although he be an Officer of Record, if he return any Office, *virtute Officii*, which he hath not taken any Enquest to enquire of the fame: And the Proceſs in the Writ of Disceit is Attachment and Distringas.

### *Writ de Parco fracto.*

A Writ of *Parco fracto* lieth where a Man distraineth Cattle for Damage-feasant, or for Rent or Service; and put them into the common Pound, or into another Pound or Place, which shall be said to be a lawful Pound; and he who hath Property in the Cattle, or other Person taketh the Cattle out of the said Pound, and driveth them where he pleaseth: He who distraineth him for, &c. shall have the Writ *de Parco fracto*.

If a Man sendeth his Servant to distrain for Rent or Services, and the Servant distraineth the Cattle, and impoundeth them, and a Stranger taketh them out of the Pound, the Master shall have the Writ *de Parco fracto*, and not the Servant, for it is the Master's Pound.

3 H. 7. 9. It is a Pound as well as if it were in his several.

Fairf. cont. 33 H. 8. pl. 56.

If a Man distrain for Rent, or Services or for Damage-feasant, and put the Cattle in the Land or Close of a Friend with his License, and he who owneth the Cattle taketh them out of the said Close, he who distraineth them, shall have the Writ *de Parco fracto*, and not he whose Close it is: For who owneth the Close, ought to have an Action of *Quare clausum fregit*, &c. for that it is not his Pound, but the Pound of him who distraineth the Cattle; and the Form of the Writ is,

*Rex Vic' Lincoln' salutem. Si A. &c. tunc pone, &c. B. ostens. quare F cum idem A. in damno suo apud N. quædam averia, vel sic, averia prædictæ B. cepisset, & ea secundum legem & consuetudinem regni nostri ibidem imparcasset, idem B. parcum illum vi & armis fregit, & averia prædictæ cepit & abduxit, & alia enormia ei intulit, ad grave damnum, &c.*

And note, that this Writ is *vi & armis*, and he shall not shew in the Writ, what Kind of Cattle they are, nor to whom the Property of the Cattle doth appertain, if that he please not so to do.

And if a Man send his Servant for to distrain for Rent, or Services, or for Damage-feasant, then the Form of the Writ is such:



*Ostens. quare cum idem A. in damno suo apud N. per B. servient' suum quendam bovem, vel, quædam averia capi fecisset, & idem B. bovem illum, vel sic: Averia illa secundum legem & consuetudinem regni nostri Angl' ibidem imparcasset, apud C. parcam illud vi & armis fregit, &c. vel sic, per Abbe, ostens. quare cum idem Abbas in domo sua in parcurio Line' per fratrem I. custod' cell' nostre sancte Mariæ Magdel' extra Lincoln' quædam averia, &c. Aliter pro def. ita in curia dom', &c. quare cum idem A. in feod' suo apud N. per servient' suum averia præd' B. pro quadam defalta, quam idem B. fecit in cur' ejusdem A. versus E. in loquela quæ fuit in eadem curia inter, &c. per considerationem curiæ prædict' capi fecisset & idem A. averia illa secundum, &c. imparcasset prædict' B. parcam, &c.*

**H** If a Man do distrain for Amercement in a Hundred, and impound the Cattle, and the other taketh them out, the Writ shall be,

*Quare cum idem A. per B. & C. ballivos suos de hundred' de N. quædam jumenta ipsius F. apud S. infra præcinctum hundred' prædict' pro quodam amerciamento, ad quod idem F. amerciatus fuit in eodem hundredo, ad opus prædict' A. levand' cepi fecisset, & idem B. & C. jumenta, &c.*

And in this Writ he ought to shew, that the Property of the Cattle were in him who was amerced, because he cannot distrain the Cattle of other Men for this Amercement; but for Rent or Service it is otherwise. For the Party may distrain the Cattle there levant and couchant upon the Lands. (a)

41 E. 3. 26.  
47 E. 3. 13.  
12 H. 7. 15.  
[101.]

If the King do distrain for a Debt or Amercement due unto him, and impound the Cattle, and a Stranger doth break the Pound, and take them out, then he shall have a Writ, and the Writ shall be such:

*Rex Vic' S. salutem. Pone per vad', &c. P. de E. & C. de D. quod sint, &c. ad respondendum tam nobis quam Georgio Regi Angliæ, quare cum W. de R. ballivus libertatis prædict' Reg', hundred' de C. in quo idem Rex sicut in cæteris terris & tenementis suis sibi per nos concessis habet returnum omnium brevium nostrorum prout ad ipsum W. ratione officii sui pertinet, virtute returni cujusdam brevis sibi pro te infra libertatem prædict' fact' pro quodam debito ad opus prædict' Reg' de prædict' P. per sum' scaccarii nostri levando, averia prædict' P. apud B. cepisset, & ea secundum legem & consuetudinem regni nostri ibidem imparcasset, prædict' P. & C. parcam illud vi & armis fregerunt, & averia prædict' ceperunt & abduxerunt, & alia enormia ibidem perpetraverunt in nostri contemptum, & ipsius Regis grave damnum, & contra pacem nostram, &c.*

**A** And when the King sueth any Writ, the Writ shall not say, &c. *Si Georgius Rex Mag' Brit' fecerit te secur', &c.* for he shall not (b) find Sureties as a common Person shall do, for he shall not be amerced, as appeareth by the Writ before.

**B** If the Husband do distrain for Rent or Services which he hath in Right of his Wife, and a Stranger taketh them out of the Pound, the Husband shall have the Writ *de Parco fracto* in his own Name; but yet it seemeth he may sue the same in his Name, and in the Name of his Wife, and join the Wife with him; *tamen quære:*

Writ

(a) See 10 H. 7. 21. 15 H. 7. 19. 6 E. 4. 8. contr. 4 E. 3. 35. contr. is of an Infant. 3 Aff. 25.

(b) And so is

## Writ of Rescous.

**T**HE Writ of Rescous lieth where a Man doth distrain for Rent or C Services, or for Damage-feasant, or would impeach or impound the Cattle, and the other Party doth rescue them, or taketh (a) them from him, then he shall have this Writ of Rescous; and the Writ is such:

*Rex Vic', &c. Si A. fecerit, &c. tunc pone, &c. ostens. quare cum idem D A. in feodo suo apud S. quædam averia, vel sic: Averia prædict' B. cepisset, & ea ibidem secundum legem & consuetudinem regni nostri Angliæ imparcari voluisset, prædict' B. averia prædict' (b) vi & armis rescussit & alia, &c. vel sic: Quare cum idem A. in feodo suo apud S. pro consuetud' & servic' sibi debitis per C. servient' suum quædam averia capi, vel sic: Quendam caretam ipsius B. capi fecisset. Et idem C. caretam illam usque manerium prædict' A. de S. secundum, &c. ducere voluisset, prædict' B. caretam illam vi, &c. in ipsum C. insultum fecit, &c.*

And so it appeareth he may join, in a Writ of Rescous, for the Assault and Battery of his Servant.

And if he do distrain Cattle, and other dead Chattels, then the Writ E shall be,

*Ostens. quare cum idem A. in feodo suo apud S. pro consuetudinibus & servitiis sibi debitis, averia & catalla prædict' B. cepisset, & averia illa imparcasset, & catalla prædict' nomine districtionis secundum legem & consuetudinem regni nostri Angliæ detinere voluisset, idem C. (c) averia illa rescussit, & catalla præd' eidem A. abfulit, & alia, &c.*

And if he do distrain for a Rent-charge, the Writ is such:

*Quare cum idem A. in quodam tenemento ipsius B. apud N. pro quodam annuo redditu per scriptum ipsius B. obligatorium districtionis ipsius A. obligato pro redditu prædict' a retro existent' quædam catalla ipsius B. cepisset, & ea nomine districtionis secundum legem, &c. ibidem detineri voluisset præd' B. catalla prædict', &c.*

And note, That if a Man fend his Servant to distrain for Rent, or F Service, or Damage-feasant, and Rescous be made upon the Servant, the Master shall have the Writ of Rescous, and not the Servant; for the Wrong is done unto him who ought to have the Rent or Service, or is damnified, &c.

If a Collector or Sub-collector distrain for Fifteens, and Rescous be made, he shall have the Writ of Rescous, and the Writ shall be such:

*Si W. de S. subtaxator decimæ in villa de S. nobis per cives & burgenf. G regni nostri ultim' concess. &c. fecerit te, &c. tunc pone B. &c. ad respond' tam nobis quam præfat' W. quare cum idem W. quædam catalla ipsius B. pro certa*

(a) Note; One may have one Writ of Rescous, for rescuing of several Distresses taken for several Tenures. 3 H. 6. 52. adjudged.

(b) Note; He ought to count for what Rent or Services, &c. he took them, and

therefore he ought to count of the Terms of Payment. 8 H. 4. 1. *Rast. Entr.* 580.

(c) Without shewing in what Place the Rescue was, for it shall be intended in the Place where taken. 30 E. 3. 15. But it shall be shewn in the Count. 10 E. 4. 15.



*certa pecunie summa ratione decim' prædict' assesse cepisset, & catalla illa ibidem nomine districtionis, nomine nostro detinere voluisset, prædict' B. catalla illa præfat' W. ibidem insultum fecit, & ipsum verberavit, &c. & alia, &c. in nostri contemptum & præjudicium, & præd' W. grave damnum, & contra pacem, &c.*

And if the Bailiffs or Officers do arrest certain Persons, and others rescue them from the Officers, then he who caused them to be arrested, shall have the Writ of Rescous, and the Writ shall be such:

*Quare cum idem Prior per chartam Domini E. quam inspeximus habere debeat apud W. liberam curiam suam de omnibus hominibus suis, tam burgens. quam aliis, & de omnibus placitis & querelis & attachiamentis qualitercunque contingent' una cum pris' & omnibus aliis ad homines suos spectant'. Ac idem Prior per B. ballivum suum apud F. R. & M. homines ipsius Prioris pro diversis transgress. apud T. infra libertatem prædict' Prioris per ipsos (ut dicit') contra pacem nostram factis, unde clamor & hutesium ibidem levat' fuerit, attachiari fecisset, & idem Prior ipsos R. & M. ibidem secundum legem & consuetudinem detinere voluisset justic' in hac parte in Curia Prioris prædict' subitur' prædict' B. & L. præfat' R. & M. de prædict' transgress. non justificat' a custod' ipsius B. vi & armis ceperunt, & quo voluerunt, abire permis'erunt, & alia enormia, &c. ad grave damnum ipsius Prioris, & libertatis sue læsion' manifestam, & contra pacem nostram.*

And note, that if the Bailiff or Sheriff, or other Officer of the King, Infra G. do arrest a Man, or distrain him for Debt, or other Service due to the King, and Rescous is made, then the Bailiff or other Officer shall have the Writ of Rescous in his own Name, and not the King's, and the Writ shall be such:

*Si T. ball' hundred' de F. fecerit, &c. tunc pone, &c. ad respondendum tam nobis quam præfat' ball' quare cum idem ball' juxta officii sui debet' W. quem per vicecomitem nostrum Com' prædict' per breve nostrum de judicio sibi directum capi præceperimus apud K. virtute mandati nostri prædict' cepisset, & ipsum usq; castrum nostrum R. in prisona nostra ibidem moraturum ducere voluisset, prædict' R. & S. ipsum W. apud villam de K. vi & armis rescusserunt, & alia, &c. in nostri contemptum, & prædict' ball' grave damnum, & contra pacem nostram, & habeas, &c.*

**A** And if the Bailiff would arrest any Person, and he himself do rescue himself, and will not obey the Arrest, then the Writ shall be such:

*Si H. de ball' villæ nostræ de S. fecerit, &c. tunc pone B. &c. quare cum idem H. juxta officii sui debitum præfat. B. pro quodam hutesio super ipsum per W. de S. apud C. levat' ad querimoniam prædict' W. secundum legem & consuetudinem regni nostri attachiasset, prædict' B. se justiciari non permittens attachiament' prædict' vi & armis fregit, & in ipsum H. ibidem insultum, &c.*

**B** And if the Sheriff send unto the Bailiff of the Liberty to levy Fines and Amercements for the King, and the Bailiff distrain certain Cattle, and the Rescous is made: Now the Lord of the Liberty shall have a Writ of Rescous of the Rescous done to the Bailiff, and for the Battery and Assault made upon him, and for the Loss of his Service, and all in one Writ.

Post. G.

If the King's Bailiff do distrain for Rent; and Rescous is made, the C Bailiff shall have the Writ of Rescous, and not the King.

And if a Man sue forth an Execution, and hath a *Capias* directed to the Sheriff to arrest the Party, and the Sheriff make his Warrant to the Baily of the King's Liberty where the Party dwelleth, to arrest him, by which the Bailiff doth (a) arrest him, and others do rescue him from the Bailiff, he who sued forth the Writ of Execution, shall have the Writ of Rescous against him that rescued him, as appeareth by the Register; but yet it seems reasonable that the Bailiff have a Writ of Rescous in such Case; for some say the Bailiff shall be chargeable to him, who sued forth the *Capias*, &c. and for the Arrest: *Tamen quære*.

And it appeareth by the Register, That if a Writ be directed unto D the Sheriff, to levy the Expences of the Knights at the Parliament, and the Sheriff make his Warrant unto the Bailiff of the Liberty of the Bishop of *Ely*, to levy the Sum assessed, &c. for which the Bailiff by his Under-Bailiff doth take certain Cattle and would impound them, and other Persons do rescue the Cattle and beat the Under-Bailiff, that the Bailiff shall have the Writ of Rescous against them; and there it seemeth that the Knights which should have the Money, shall not have a Writ of Rescous for the same Rescous, because it is not a Duty unto them by any Person certain, but to be levied of the Inhabitants of the Towns.

§9 E. 3. 35.

And if the Lord do distrain his Tenants Cattle, and a Stranger's E Cattle, for Rent or Service behind, when there is not any Rent or Service behind, the Stranger may rescue his own Cattle, but not the Tenants, as it seemeth. And that as it seemeth by the Statute of *Marlbridge cap. 3.* which willeth, *Non ideo puniatur Dominus per redemptionem*, yet the Opinion of *Thorpe M. 31 E. 3.* is contrary; for he saith, the Stranger may rescue as well the Tenant's Cattle as his own. *Quære. (b)*

Vi. Lit. 52.

9 H. 7. 4.

And Rescous is not, but where he hath the Possession of the Cattle, P or the Thing of which the Rescous is supposed to be made: For if a Man come to arrest a Man, or to distrain, and he is disturbed to do the same, he shall not have a Writ of Rescous, but an Action upon the Case. (c)

And the King shall not have the Writ for a Rescous done to his Of- G ficer, *qd' vi' P. 20 E. 3.* but he may cause him to be indicted for the same. *Vid. supra C.*

Audita

(a) Note; The Sheriff may return a Rescous, and at that Return the Party may have his Answer. 3 H. 7. 11. *Dyer* 212. and *Westm. 2. c. 40.* And yet if the Rescous be at any Time after the Arrest, the Sheriff shall be charged in Debt on an Escape, if it were not made by the King's

Enemies; and the Sheriff shall have his Remedy over by Action on the Case. *Dyer* 241.

(b) And note 4 E. 6. *Distress* 74. *contr.* See 6 E. 4. 11. 5 E. 4. 10, 11. 19 H. 7. 48 E. 3. 33. 3 H. 4. 22. 22 H. 6. 37. *contr.* 29 E. 3. 35. 4 Co. 11. b. *Bevill's Case.*

(c) See 21 H. 7. 40. 44 E. 20.



## Audita Querela.

**H** **T**HIS (a) Writ of *Audita querela* lieth as well upon Matter in Fact, as upon Matter in Writing, as after appears. And this Writ shall be directed unto the Justices of the Common Pleas or King's Bench, and lieth where *A.* and *B.* come before the Mayor, &c. and *B.* doth acknowledge himself to be bounden in 100 *l.* to *A.* in the Name of *C.* before the Mayor; and affirmeth his Name is *C.* and afterwards *C.* is arrested by Force of this Bond and Statute, and taken in Execution: Now *C.* shall have *Audita querela* against *A.* and *B.* and the Form is such:

*Rex iusticiariis suis de banco salutem. Querelam C. recepimus continent' quod A. & B. collusione inter eos apud W. præhabita, Cur' nostr' illuder' & præf. C. callide prægravare machinantes, nuper coram C. Majore villæ nostræ Southampton, & R. Clerico ad recognitionem debit' apud S. accipiend' deputat' comparentes ipsum C. &c. C. sacramento corporali ad hoc præst' exist' asseruerunt, per quod idem B. sub nomine ejusdem C. præf. A. 100 *l.* ad certum terminum jam præterit' solvend' coram eisdem Major' & Clerico, juxta formam statuti dudum apud Acton Burnel pro mercatoribus editi, se deber' recogn', & postmod' ipsum C. pro eo quod ipse prædict' 100 *l.* præf. A. ad terminum prædict' non solvit, per præf. Majorem capi, & in prisona nostra salvo custodiri, quousq; eidem A. de eisdem 100 *l.* plen' satisfac', false & malitiose procurar' in ipsius C. damnum non modicum & deceptionem Cur' nostræ manifestam, super quo idem C. nobis supplicavit, ut sibi remedium congruum adhiberi velimus: Vobis mandamus, quod auditis querelis ipsius C. in hac parte, & vocatis coram vobis præf. A. & B. ac præf. Majore & Clerico, auditisque hinc inde partium ration' eidem C. super falsitat', malitia & decep' prædict', plenam & celerem justiciam fieri fac' prout de jure, & secundum consuetudinem regni nostri fore videritis faciendum. Teste, &c.*

**A** If a Man lease Lands unto *A.* for Life, and afterwards by Fine grants the Reversion unto *B.* in Fee, and dieth, and the Heir of the Recognisor, and one *L.* by Covin betwixt them (b) sue a *Præcipe in Capite*

**H h**

against

(a) Note a Diversity, where the Discharge comes by Determination of the Estate, there the Conusor needs no *Audita querela*. For if Tenant in Tail acknowledges a Statute, which is extended, and he dies, his Issue may avoid it by Entry. 38 Aff. 5. 43 Aff. 18.

(b) See 17 E. 3. 60. *A.* Tenant for Life, Remainder to *B.* in Tail, *C.* by Covin between him and *A.* brings a Formedon against *A.* and *B.* supposing them Jointenants, and one *D.* answers as Attorney for *B.* and Process is continued 'till they make Default after Issue joined, whereupon Judgment final is given, and *B.* shews this

and prays that it be entred, for that it is within the Year: And it was entred on Record; (2.) And also agreed, That he shall have Restitution; but *A.* shall not, for he has forfeited his Estate. (3.) That he should not have Restitution on a general Bill of Disceit, but ought to sue an *Audita quer'* in Chancery on his Case, *tam super Restitutione ten'ti quam pro deceptione punienda.* 17 E. 3. 46. and so note Restitution at least, where the Demandant was Party to the Disceit. See 21 E. 3. 45. 19 H. 6. 44. 1 H. 4. 5. Stat. 21 Jac. 1. cap. — 17 E. 3. 76. Register 114, 115.

against the said *A.* supposing the Land to be holden of the King, whereas it is not holden of the King, but of another Person: And in this *Præcipe in Capite* they cause one *F.* to appear as Attorney for *A.* and to join the Mife in the said Writ; and afterwards the Attorney by *Covin* doth make Default, for which Judgment is given against *A.* Now upon the same Matter he shall have an *Audita querela* directed unto the Justices of the Common Pleas, commanding them to proceed as well for the Restitution of the Land, as upon the Disceits, and to do speedy Justice as of Right according unto the Custom of the Realm they ought to do; and the Writ is such:

*Rex Justic' suis de banco salut'. Monstravit nobis A. ut cum ipse nuper manerium de C. cum pertinen' in Com' L. ad terminum vite sue tenuisset ex dimissione I. ac H. fil' & her' prædict' J. manerium prædict' T. de S. & hered' de corpor' ipsius T. exeuntibus (ut dic') per finem inde in Cur' nostra coram Justic' nostris de banco apud W. levat' post mortem prædict' A. habend' concessisset, B. filius & hæres prædict' H. & L. collusion' inter eos præhabita, præfat' A. de prædict' manerio amover' & præfat. T. de rever' manerii prædict' excluder' machinantes breve nostrum (quod vocat' Præcipe in cap') Vic' nostro Leicestr' ad certum diem jam præterit' retornabile de manerio prædict' ac si idem maner' de nobis teneret' in capite cum non teneat' sub nomine præd' E. versus præf. A. & T. in Cancellar' nostra impetrari, & brev' nostr' prædict' quod prædict' A. & T. juxta formam brevis prædict' sum' fuerunt essendi coram vobis ad diem prædict' per præf. Vic' retorn' ac quendam ignotum qui se R. de S. nominari asseruit coram vobis in banco prædict' apparer' ad perdendum vel lucrand' in loquela prædict' per præf. A. & T. attornat', ipsis A. & T. de impetratione brevis sum' & attornato prædict' sub nomine suo ut premitit', facto penitus ignorantibus falso & maltiose procuraverunt, ac præf. attornat' ad eundem diem coram vobis comparens posuerit se in magnam assisam nostr' & petierit recognition' fieri, utrum iidem A. & T. majus jus habuer' tenend' dictum man' cum pertinen' sicut illud tenuer', an prædict' E. habend' dict' man' sicut illud petiit, per quod per defaultam quam iidem A. & T. postmod' fecerunt, in ead' Cur' per vos consideratum fuit ibid' quod prædict' E. recuperaret seisinam suam de prædict' man' cum pertin' versus præf. A. & T. Tenend' eidem E. & hered' suis quiete de prædict' A. & T. & hered' suis in perpetuum; cujus quidem considerationis pretextu prædict' A. a man' sua prædict' cum pertin' perpetue est amotus, in ipsius A. damnum non modicum, & Cur' nostre deceptionem manifestam, super quo præfatus A. nobis supplicavit congruum remedium sibi adhiberi. Nos hujusmodi collusionem, malitiam, & deceptionem, transire nolent' impunit', Vobis mandamus quod audit' querel' ipsius A. in hac parte, & vocat' coram vobis præf. E. & L. L. & al' in hac parte, quos for' videritis vocand', & auditis hinc & inde partium rationibus, ulterius eid' A. (a) tam super restitutione & recuperation' dicti man' quam super collusionem, malitia & deceptione prædict' plenam & celerem justic' fieri faciatis, prout de jure & secundum legem & cons. regni, &c. faciend'. Teste, &c.*

(a) See 41 E. 3. Execution 37. 16 H. 7. 16. 47 E. 3. 4. 13 H. 7. 22. 45 E. 3. 17.



And by this Writ it seemeth the Justices ought to make void the Recovery, if they find the Disceit, &c. yet it seemeth they may not so do.  
17 E. 3. 60. 21 E. 3. 45. 19 H. 6. 44.

B (a) If a Man be bound in a Statute-Merchant, and afterwards maketh a Feoffment of Parcel of his Lands unto another Man, and of other Parcel unto another, and the Recognisee sueth Execution upon the Statute, and hath Execution against one Feoffee, that Feoffee shall have an *Audita Querela* (b) against the other Feoffee, to shew Cause why he should not have Execution of his Lands, as of the Lands which himself hath.

9 H. 4. 4. 32.  
E. 3. Execur.  
127. 45 E. 3.  
51. 16 Eliz.  
Dy. 3. 37. 4.  
E. 3. 522. &c.  
3 Eliz. Dy.  
193, 194.  
Whaley's  
Case.

C If a Man be bounden in a Statute-Merchant, and certain Indentures of Defeasance are made of the said Statute, and afterwards the Conusee doth arrest the Recognisor and imprisoneth him, and taketh the Defeasance from him, and then sueth Execution upon the Statute, the Recognisor shall have an *Audita Querela* against him upon the whole Matter.

A If at the *Nisi prius* in Trespass it be found for the Plaintiff, and Damages assessed, and before the Day in Bank the Plaintiff release unto the Defendant all Actions and Demands, and afterwards (c) prayeth Judgment, and sueth Execution thereupon, the Defendant upon that Release shall have an *Audita Querela*.

[104.]  
40 Ass. 23.  
44 Ass. 15.  
Holt. Br.  
Audit. Que-  
rela. 43. 9 H.  
5. 1 Br. Au-  
dit. Quer.

16. 36 H. 6. 24. 21 H. 7. 83. 3 H. 4. Br. *Audita Querela* 37. Fitz. Release 53. Release of all Actions is not sufficient Matter to have *Audita Querela*.

H h 2

And

(a) See 33 E. 3. *Audita Querela* 38. 11 E. 3. Brief 266. 29 E. 3. 7.

(b) See 15 E. 3. Execution 127. and against the Conusee, and thereby he shall be restored to the Issues, and the Execution defeated. 45 E. 3. 17. 29 E. 3. 7. where there are two Conusors, and the Lands of one only are delivered, who sues a Writ to the Sheriff to deliver the Lands, &c. of the other in Discharge and Aid of the former, who returns *Non est inventus*, and that none came on the Part of the Conusee; and now he prays Remedy, and has a *Scire Facias* against the Conusee to take his Suit against the other; and if the Conusee knows not what to say, or does not appear, he shall have Execution against the other, or the Party shall be discharged, having Regard to his Part or Portion of the Debr. Dyer 193. Gasoin and Whaley.

If the Conusor enfeoffs the Conusee of Part of his Land, and his Son of the Residue, and dies, and the Conusee sues Execution against the Son, the Son may have an *Audita Querela*, and discharge the Exe-

cution *eadem Causa*, but no Costs or Damages. So if the Lands of one of the Feoffees only are delivered in Execution, he may have an *Audita Querela*, and a *Scire Facias* against the other, and it shall be no Plea in Abatement of the Writ, that there are other Feoffees to be contributory: For he is bound at his Peril to take Notice of all such as are contributory.

Note the Diversity: If the Conusor of a Statute-Merchant enfeoffs divers severally, and the Lands of one only is taken in Execution, he shall have an *Audita Querela* against the Conusee, to make the others contributory, and the Writ shall be directed to the Justices *de Banco*; but of a Statute-Staple, it shall be in Chancery by *Audita Querela* directed to the Chancellor, or by a *Scire Facias* directed to the Sheriff, *quare Tenementa extensa una cum profiuis medio Tempore*, &c. Dyer 331, 332.

(c) For he cannot plead this at the Day in Bank, and before Judgment he cannot have an *Audita Querela* to stay Judgment. 9 H. 5. 1.

48 E. 3. 5. 15. And the Heir of the Recognisee may sue an *Audita Querela*, if he B  
H. S. 5. Vi. 2. have Matter in Writing to discharge the Execution.  
& 3. Eliz.

Dy. 193. (a) If a Man be bound in a Statute Merchant or Staple, and afterwards C  
43 E. 3. 38. payeth the Money according to the Statute, and hath the Statute de-  
Finchden. livered unto him, and cancelleth the same, and afterwards the Recognisee forgoeth a new Statute in the Name of the Recognisor, the Recognisor upon the Statute cancelled shall have an *Audita Querela*.

43 E. 3. 27. (b) If a Statute Merchant or Staple be made by one unto another, and D  
con. 12 H. 4. delivered into the Hand of a Stranger to deliver upon Conditions per-  
6 Calp. con. formed, and the Stranger doth deliver the Statute before the Condi-  
tions performed, and the Conusee sueth Execution thereupon, the Recognisor shall have an *Audita Querela*.

12 H. 4. 15. If a Man sueth forth an Execution upon a Statute, and hath Execu- E  
and 16. tion, and afterwards grant over his Estate, the Recognisor shall have an  
Frankford. *Audita Querela* against the Grantee without naming him who sued the Execution, if he have Matter in Writing for to sue, &c.

41 E. 3. Aud. A Man may sue an *Audita Querela* against the Recognisee, because F  
Querela 18. he hath purchased a Manor unto which the Recognisee is a Villain  
regardant, and yet he may enter and seise the Recognisee without such  
Suit.

46 E. 3. 28. (c) And a Stranger who made not the Recognisance, nor was Te- G  
Fulthorp. nant of the Land at the Time of suing forth of the Execution, shall  
17 Aff. 24. *Audita Querela*.

20. 10 E. 3. 25. Error 71. the Feoffee had Error.

have

(a) *Contra*, if the Conusor himself comes into Chancery, and prays a Re-extent, and it seems this Writ lies, if the Statute be delivered instead of an Acquittance, but is not cancelled. 43 Aff. 18.

(b) See 7 H. 6. 42. A. makes a Statute-Staple to B. and delivers it to C. to be redelivered on Condition, &c. B. recovers by an erroneous Judgment, where A. was warned, and the Deed is delivered to him by C. B. sues Execution, and A. brings Error. Resolved, (1.) That pending the Errors and Execution, he cannot have a *Superfedeas*. (2.) If A. reverses the Judgment, this does not defeat the Execution had on the Statute, but it seems he is put to his *Audita Querela*.

(c) If Execution be awarded against the Feoffee, he shall have an *Audita Querela*, on a Matter of Discharge, made either before the Feoffment, or after. 7 E. 3. 27. John S.—Case. Where he shall have a Writ of Error, see 17 Aff. 24. Chester's Case; but if Execution be made, and after the Extent, the Conusor makes a Feoffment, it seems the Conusee shall not have an *Audita Querela*, on a Cause or

Matter of Discharge made before; as if after the Extent, and before the Feoffment, or before the Extent, the Conusee will acquit the Debt, and so seemed the better Opinion. Mich. 44. 45 Eliz. In Chancery in an *Audita Querela* brought by Harden and Varisor, and their Wives, against Smith, Executor of Riggs. Atcor, Case 737. but on a Matter happening after the Feoffment, he shall have an *Audita Querela*, as on a Release, &c. (and so here G.) and 17 Aff. 24. a Feme shall have a *Scire Facias ad computand'*; and Note, (1.) For whom it lies. (2.) Against whom it lies. (3.) When it lies. (4.) The Effect of the Suit. It lies by the Grantee of a Reversion, with Attornment, &c. and there he shall account *ab initio*. 6 E. 3. 53. l. de Charlton's Case. 25 E. 3. 53. John Venner's Case. So if one acknowledges a Statute, and afterwards acknowledges a second Statute, the second Conusee shall have a *Scire Facias* against the first, to receive the Monies which are to be levied, if the Tenant of the Freehold will not sue. 38 E. 3. 12.

(2.) If the Conusee has assigned but a Part of his Estate, the *Scire Facias* shall be



have an *Audita Querela*, if he have Matter of Discharge in Writing. *Vi. 11 E. 3. Lit. Aff.* and there it is said the same is given by the Statute. The Feoffee shall not have a Writ of Error, &c. Nor the Feoffee of the Conusor of Part of the Lands shall not have an *Audita Querela* until his Lands be taken in Execution.

H If a Man sueth *Audita Querela* against the Conusee, and sheweth a Statute cancelled; and saith the same was delivered (a) to him in lieu of Acquittance, the Recognisee may shew the true Statute, and shew that the Statute shewed which was cancelled was a forged Statute, and thereupon he shall have a Writ unto the Justices in the Nature of *Aud. Querela* commanding them that they send for the Mayor and the Clerk, and for the Parties, and for to do Right; and the Examination of the Mayor and Clerk shall try and end the Matter; *Quod vi. M. 11 E. 1.*

18 E. 3. 36. *Aud. Quer.* 9. the Conusor must shew the Statute, otherwise he shall not have the Plea.

I Upon a Recovery of a Debt, if he sue a *Scire facias*, and the Sheriff return *nihil*, by which an Execution is awarded, the Defendant shall have *Audita Querela* if he have a Release or Acquittance, because he was not warned: But if the Sheriff hath returned him warned, he shall not have *Audita Querela* upon such Release, &c. because he might have pleaded the same upon the Return of the *Scire facias*. (b)

48 E. 3. 20. 12 H. 4. 4. per Hungerf. 21 E. 3. 15. *Hil. Aud. Quer.* 18.

(a) And

be brought against the Conusee only, and not the Lessor; *Quare*. But if he assigns the Whole, and the Assignee levies the Whole, or the Plaintiff will pay the Residue, the Writ lies against the Assignee alone, and he shall retake (or repay) the Monies; but if he has levied the Whole, and afterwards assigns, the Writ lies against both. 50 E. 3. 46. or 16. 38 E. 3. 12. 21 E. 3. 1. 46 E. 3. *Scire facias* 134. 15 E. 3. *Respond.* 3. But one of them may answer without his Companion, and yet the Conusee may release, notwithstanding the Assignment. *Vide ibid.* See also 17 *Aff.* 52. 9 E. 4. 13. 12 H. 8. 8. 18 E. 3. 25. *contr.* 17 *Aff.* pl. 24. *contr.* 25 *Aff.* 8. 17 E. 3. 43. 4 H. 6. 72. 21 E. 3. 46. *contr.* See 17 E. 3. 49.

And *Note*; This Writ lies in Case of a Statute after the Debt, and Damages levied by the casual Profits, by Course of Time, or by Render of the Money, and he shall recover his Land. See 47 E. 3. 11. 32 E. 3. *Scire facias* 101. 46 E. 3. *Scire facias* 134. *Vide Registr. Judic.* 73. but not to re-have the Land, and also answer for the Waste. 21 E. 3. 26. 30. For it seems he may have a Writ of Waste, &c. *Vide F. N. B.* 58. H. acc. *Quare*. And *Note*; If by the casual Profits, he has levied more than his Debt and Damages, the Surplus shall be paid to him in Reversion, if it was levied in his Time, or at

least as much as was so levied over. 21 E. 3. 30. And the Tenant shall account to the Grantee *ab initio*; for perhaps the Term was incurred before the Purchase of the Reversion. 6 E. 3. 63. But he shall not account according to the true yearly Value, but according to the Extent; for if the Lands are extended too low, the other may have a Re-extent at the first Day in Court. 22 *Aff.* 44. *Extent* 3. But afterwards, he has no Remedy but to pay the Money. See 19 E. 3. *Extent* 12. per *Green.* 32 E. 3. *Scire facias* 101. And therefore on a *Scire facias ad computandum*, he ought to shew what the casual Profits are, *ibid.* yet See 20 E. 3. *Extent* 18. *contr.* per *Wilby.* And *Note*; The Writ is sometimes *ad computandum* against the Opinion in 22 *Aff.* 44. and sometimes *ad computand'*, and to receive the Residue of the Money, and to re-have the Land.

(a) And in such Case Execution shall be awarded, if the Conusor does not shew the true Statute. 18 E. 3. 36. See 17 E. 3. 49. 21 E. 3. 46. *contr.*

(b) See the Case (18 E. 3. 36.) where 'tis also held, that if a *Venire facias* on an *Audita Querela* be not sealed, yet the Party may appear and plead. 21 E. 3. 13. See a *Scire facias* by a Bishop against an Executor; the Sheriff returns [*Cleri. us & beneficiatus, &c.*] Whereupon a *Fi. Facias* issued to the Ordinary; (*Note*; He was not charged

6 E. 7. Eliz.  
Dyer 232.  
Rule that  
the Writ  
doth not lie  
after he  
cometh of  
full Age.

13 E. 3. 2.  
18 E. 3. 8.  
15 E. 4. 5.  
Brin. ac. 20.  
E. 3. Aud.  
Quer. 27.  
25 E. 3.  
Aud. Quer.  
28.  
25 H. 8. Br.  
Aud. Quer.  
39.

24 E. 2. 24.  
Br. Audita  
Querela 22.  
9 H. 5. 1.

43 E. 3. 28.  
Thorp.  
24 E. 3. Au-  
dita Quere-  
la 11.

(a) And if an Infant bind himself in a Statute Merchant or Staple, K he shall have an *Audita Querela* during his Nonage, to avoid that Statute, and afterwards he shall have an *Audita Querela* after his full Age, to avoid that Statute upon that Matter in Fact.

And so if a Man make a Statute Merchant or Staple by Durefs, he L shall have an *Audita Querela* to avoid that Statute by this Imprisonment.

(b) If two be severally bounden in two several Statutes, and afterwards M the Recognisee by Deed doth release both the Statutes to one of them, if he sue Execution against them severally, they shall join in *Audita Querela* upon that Release.

If the Recognisor enfeoff a Stranger of Parcel of the Land, and N afterwards enfeoffeth the Recognisee of another Parcel of the Lands, and afterwards the Recognisee sueth Execution against the Recognisor and the Feoffee; the Feoffee shall have an *Audita Querela* against the Recognisee, and discharge his Lands, because that the Recognisee hath discharged his Parcel of Land which he purchased by his own Act. (c)

Upon an *Audita Querela* sued he shall have a *Superfedeas* in the same O Writ to stay Execution, &c. But if he be (d) Nonfuit, he may have a new *Audita Querela*, but then he shall not have a *Superfedeas* to stay Execution.

And a Man shall not have an *Audita Querela*, supposing the Recog- P nisee will sue Execution, but it ought to be alledged in the Writ, that he hath *in facto* sued Execution.

(e) If a Man sue *Audita Querela* upon a Release, and afterwards is Q Nonfuit, he shall not have an *Audita Querela* upon new (f) Matter, *ut dicitur* 43 E. 3. But it seemeth the Law is otherwise, but he shall not delay Execution by a new *Audita Querela*.

If

as Executor,) and he sequesters; the Executor sues an *Audita Querela*, and Resolved, 1. That tho' the Executor had a Co-Executor, yet if he alone be grieved, he alone may have this Suit. 2. That this Suit lies, notwithstanding the *Scire facias*, 21 E. 3. 48. If both Plaintiff and Defendant make Default at the *Scire facias*, yet *Audita Querela* lies on a Release made before; *contra* if the Defendant makes Default, and the Plaintiff appears. 24 E. 3. 24. See 8 H. 6. 1. per *Martyn*. 12 H. 7. *Kelw.* 24. See *Dyer* 203. an *Audita Querela* after Judgment against the Plaintiff, for the Executors of a Testament, which was afterwards annulled. See 48 E. 3. 20.

(a) Note; 'Tis necessary he bring it whiles under Age; but he shall not avoid it by Plea, saying he was within Age generally. 17 E. 3. 76. *Dyer* 132. 13 E. 3. *Audita Querela* 26, 27. 18 E. 3. 5. 29. 6 E. 3. 29. See *Kelw.* 10. per *Keeb.* *Quere* 26, and 6. *El. C. B. Harrison and Worley's*

Case, Judgment reversed, *durante Minority*. *Vide infra* C. *Dyer* 232. b. 13 E. 3. 182.

(b) It seems the Tenants in Common, &c. need not join in an *Audita Querela*, with the Tertenants. *Quere* 20 E. 3.

(c) *Vide infra* E. 11 H. 7. 4. 13 H. 7. 42. 7 H. 4. 31. 34 *Aff.* 15. 5 E. 6. (H. 6.) 72. \*

(d) Note; If the Conusee sues divers Certificates, and on one of them has a Writ returnable in C. B. and the Conusor purchases an *Audita Querela*, and has a Writ returnable in B. R. and the Party is taken thereon, he ought to sue a Writ to the Mayor and Clark, to certify if he has other Statutes, and so shall be aided. 29 *Aff.* 29, *viz.* per *Audit Querel*, *ibid.* 41. See 2 H. 7. 12. 33 E. 3. *Execution* 161. 9 H. 7. 16 H. 7. &c.

(e) See 17 E. 3. 27. 43 E. 3. 28. 24 E. 3. *Audita Querela* 11. and *ibid.* 29.

(f) See 33 E. 3. *Executors* 61.



**R** If a Man doth comprehend two Matters in the *Audita Querela* to 44 E. 3. 36.  
 extinguish the Execution, yet the Writ is good, but the Plaintiff shall 24 E. 3. 27.  
 hold himself to one Matter, and the Defendant shall answer to that. Br. Audita  
 And Variance betwixt the *Audita Querela* and the Record shall abate Querela 24.  
 the Writ. But there is a new *Audita Querela* sued according to the  
 Record, he shall have a *Superfedeas* to stay Execution, &c. although  
 he had before a *Superfedeas* in the other *Audita Querela*, which was  
 abated.

**S** If a Man sue Execution upon a Statute-Merchant, and hath a *Capias* Vi. 22 H. 6.  
 returned in the Common Pleas, if the Feoffees or Parties will sue an 56.  
*Audita Querela*; they ought to sue the same out of the Chancery, di-  
 rected unto the Justices of the Common Pleas.

**T** If a Man sue an Execution upon a Statute-Merchant as Executor un- 2 R. 3. 8.  
 to another, the Party shall not have an *Audita Querela*, supposing in con. if the  
 the Writ that he who hath such Execution is not Executor. See 29 E. 3. 99 Testator be  
 living.

**V** (a) And the Process in *Audita Querela* is *Venire facias* and *Distringas*, Br. Au. Que-  
*Alias* and *Pluries Distringas*, and if he return *Nihil*, or *Non est inventus*, rela 41.  
 he shall have a *Capias* against the Defendant. T. 81 E. 3. (b) [105.]

**A** A Man recovereth by Default in an Action of Waste, the Defendant 48 E. 3. 1.  
 sueth an *Audita Querela*, directed unto the Justices out of the Chancery, he shall not  
 furnishing in the Writ, that he was not summoned, nor attached, nor have *Capias*;  
 distrained; for which the Justices grant out of the Rolls in the Common but *fi ut a-*  
 Pleas, a Writ of *Disceit* against the *Audita Querela* which was but a *lias*.  
 Commandment to the Justices to do Right unto the Party, &c. Trin. 12 H. 4. 6.  
 19 E. 3. And yet they shall proceed upon the Writ of *Disceit*, and not and 15.  
 upon the *Audita Querela*.

**B** (c) If a Man be bounden in a Recognizance in the Common Pleas, 22 H. 6. 56.  
 and afterwards doth release unto the Party, and then against his Release  
 sueth Execution; then he shall there come into the Common Pleas,  
 and shall sue an *Audita Querela* thereupon out of the Rolls. And so if  
 one recover in the Common Pleas or King's Bench, Debt or Damages,  
 and afterwards by his Deed releaseth the same, and afterwards sueth  
 forth

(a) The *Distringas* may be in the Lands and Tenements, which he had the Day of  
 the Writ purchased. 18 E. 3. 36. 38 E. 3.  
 1. and before the *Distringas* sued, the Co-  
 nusee shall not be ousted. 21 H. 6. 56. See  
 48 E. 3. 1. 31 E. 3. *Audita Querela* 24. 20  
 E. 3. *ibid.* 28. 30.

(b) *A.* enfeoffs *B.* on Condition to re-  
 enfeoff *A.* and *C.* his Wife for their Lives  
 remainder to *D.* the Daughter (Son) of *A.*  
 and the Heirs of his Body, and the said  
*B.* by Collusion between him and *E.* makes  
 a Recognizance of 200 l. to *E.* and one *F.*  
 (after the Re-enfeoffment as it seems,) *A.*  
 dies, and *C.* takes *G.* to Husband, who on  
 this Matter sues an *Audita Querela*, and  
 'twas Resolved, (1.) That he need not  
 count upon this Writ. (2.) That tho' he  
 may have Remedy by Writ of *Disceit*, or

Conspiracy, yet seeing here is Matter of  
 Record, which is the Ground of the Writ,  
 it is good. But (3.) for that *E.* was Par-  
 ty to the Recognizance, and by the Writ  
 is supposed Party to the Collusion, and  
 this Suit is to defeat the Recognizance,  
 and not to recover Damages; the Writ  
 shall abate. 26 E. 3. 73. If Execution be  
 sued against a Feoffee, on a Statute ac-  
 knowledged before the Mayor of *C.* who  
 had no Authority to take it, *Audita Quere-*  
*la* lies. See 29 H. 8. *Dyer* 35.

(c) And if the Party comes in, in Custody  
 by a *Cepi corpus*, or a *Reddidit se*, at the  
 Exigent, he shall have a *Scire facias* to ac-  
 knowledge the Deed, but not if he offers  
 to appear at the Exigent. *Dyer* 285. See  
 a *Scire facias* to acknowledge a Deed. 33  
 E. 3. *Execution* 161, and *Audita Querela* 38.

forth Execution upon the Recovery, the Party to whom he released shall have *Audita Querela* out of the Common Pleas or King's Bench where the Record is, and yet he may have an *Audita Querela* out of the Chancery, and so it shall be sometimes Judicial, and sometimes Original.

46 E. 33. And if a Man be bounden in a Statute Merchant or Staple unto another Man, and afterwards the Recognisee make a Defeasance unto the Recognisor; now if the Recognisee sue Execution upon the Statute against the Form of the Indentures, the Recognisor (or his Executors, if he be dead) may have an *Audita Querela* against the Recognisee. C

48 E. 3. 12. And it appeareth in the Register, that a Writ of *Audita Querela* D  
47 E. 3. 5. lieth for an Infant who hath entred a Statute-Merchant or a Statute-Staple during his Nonage, if he be yet within Age.

Ant. K. And another *Audita Querela* appeareth in the Register for the Feoffee, E  
of Parcel of the Land which belonged to the Recognisor against the Recognisee, because that the Recognisee hath purchased other Parcel of the Lands of the Recognisor, &c.

Ant. N. Sureties. If a Man be arretted and imprisoned upon a Statute-Merchant, and F  
afterwards the Recognisee doth release unto the Recognisor, or he pay the Debt, and hath Acquittance, or pay Parcel, and hath a Release for the Residue; then they may come into the Chancery, and there find Surety, Body for Body, to be in the Chancery at a certain Day, and there to pay the Money, &c. if he cannot discharge himself by Acquittance or Release; and thereupon he shall have a Writ unto the Sheriff where he is in Ward, rehearsing how he hath found Sureties in the Chancery, commanding him to deliver him if he kept him in Prison for that Cause, and for no other Cause, and upon that he may have an *Alias* and a *Pluries* and *Attachment* against the Sheriff, if he will not deliver him, &c.

But if a Man be arrested and imprisoned upon a Statute-Staple, and he hath Acquittance or Release to discharge himself, then if he will sue an *Audita Querela* or a *Scire facias* to avoid the Execution of that Statute, he ought for to give Surety as well to the Party, as unto the King in the Chancery, severally in a certain Sum, &c. to sue with Effect, and to render his Body, or pay the Money, &c. otherwise he shall not be delivered out of Prison: And the same is by Force of the Statute of 11 H. 6. cap. 10.



## Writ of Attaint.

**G** **T**HE Writ of Attaint lieth where false Verdict is given (a) in a Court of Record against the Plaintiff or Defendant, or against the Demandant or Tenant in a Plea real or personal sued by Writ or by Bill; if the Debt or Damages do exceed 40 s. Then he against whom the Verdict passed shall have a Writ of Attaint, and the Writ shall be such: If it be in Action of Trespas in the King's Bench.

**H** (b) *Si E. de L. fec' te secur', &c. tunc summon', &c. 24. legal' milites de visu' de N. quod sint coram nobis apud B. in octabis S. Hill. parati sacrament' recognosc' si jurator' per quos quedam inquisitio nuper capta fuit coram nobis apud B. per breve nostrum inter I. & M. ux' ejus & præd' S. de quadam (c) transgressione eidem M. per præf. K. illata, ut dicit' falsum fec' sacram' sicut idem S. nobis gravit' conqueren' monstrav' & interim diligen' inquiras, qui fuer' (d) juratores primæ inquisitionis, &c. & eos tunc habeas coram præf. Justic', &c. vel coram nobis, &c. as the Case is and lieth (e).*

**I** And by the Statute of *West. 1. cap. 38.* a Man shall have an Attaint in Plea of Land of Freehold, of a Thing which toucheth the Freehold; so it lies at Common Law. *3. H. 4. 15. per Hull.*

**K** And by the Statute of *1 E. 3. cap. 6.* a Man shall have Attaint in Trespas. See for Attaint in Trespas or Debt. *Parl. 2. E. 3. N. 23.*

**L** And by the Statute of *5 E. 3. cap. 6.* in the End of the Statute a (f) Man shall have Attaint of Trespas sued by Bill without Writ before Justices of Record, if the Damages exceed 40 s.

I i

And

(a) See on the Stat. *23 H. 8. cap.* — that Attaint lies against the Executors or Heirs, &c. *Quare Dyer 201.*

(b) But if they are at Issue on the Point of an Attaint, it shall be tried by 12 (Jurymen.) *21 E. 3. 102. Contr.* where the Defendant pleads a Release of the Plaintiff, it shall be tried by 24, who are also afterwards to inquire of the false Oath, if they find for the Plaintiff. *20 H. 7. Kelw. 55. Note;* The Visne ought to be of the same Place where the Issue in the first Writ arose. *12 R. 2. Brief 641. Post. 242. b.*

(c) Altho' the original Writ or Suit comprised many Points, yet the Writ of Attaint shall mention only the Point on which the false Oath was given. *Dyer 141.*

(d) So that properly the Jurors are not Parties, and therefore where the Defendant admits the Writ to be good, or is estopped to say 'tis not good, the Petit 12. shall not plead in Abatement, tho' the Writ was purchased pending another, Joitenancy or Coverture in the Plaintiff,

*21 E. 3. 16.* or Outlawry in the Plaintiff. *2 H. 7. 7.* But a Plea which proves the Writ abated *in facto* they may have, as Death of the Plaintiff or Defendant. *18 H. 8. 5.* Also a Thing which excuses the false Oath, they may plead as a Release of actions Personal. *21 E. 3. 16. per Thorp,* or a Release or Award between the Plaintiff and Defendant. *13 E. 3. 1. 5. 35 H. 6. 30. 18 H. 8. 1.* So a Release or award between the Plaintiff and themselves. *13 E. 4. 1. per Sullivard. 12 H. 6. 6.* the petty Jury cannot plead *Non-tenure*, because it concerns the Land; *contr.* of Coverture.

(e) And the Party may have Attaint by another Writ. See *18 E. 2. Brief 827.*

(f) But if the Damages do not exceed 40 s. he shall not have Attaint on the Stat. altho' A. sued by Bill of Trespas against B. who pleads Villainage against A. and found A. to be free. Stat. *28 E. 3. cap. 8.* *Quare,* if he shall have a Writ of Neif against such Verdict.

14 H. 7. 14.  
Fineux.

And also a Man shall have Attaint for the Damages, although they M be not paid, &c. Stat. 2. E. 3. cap. 7.

34 H. 6. 13.

And if false Verdict pass by Writ of *Nisi prius*, then the Form of N the Writ is such :

*Parati sacramento recognosc. si jurat' per quos quedam inquisitio nuper summon' fuit coram nobis, & capta coram dilect' & fidel' nostr' T. de B. uno Justic' nostr' ad placit' coram nobis tenenda assign' per breve nostrum de Nisi prius apud K. inter ipsum E. & pref. T. de quadam transgressione, &c.*

44 E. 3. 21.

44 Ass. Br.

Attaint 131.

See 14 E. 3.

41. the Form.

[106.]

And if the Verdict be taken within any Liberty or Corporate Town, O then the Writ of Attaint is such :

*Parati sacramento recognosc' si juratores per quos quedam inquisitio nuper sum' fuit, & capta apud L. sine brevi nostro coram Majore & Ball' Civit' nostræ Lincoln' de loquela quæ fuit coram dilectis & fidel' nostris S. Scrope & sociis suis Justic' nostris ad placita coram nobis tenend' assign' inter I. de L. & pref. S. de quadam transgr' eidem I. per pref. S. illata, ut dicitur, quæ quidem loquela juxta libertates civitat' civibus civitat' nostræ præd' per chartas progenitorum nostrorum quondam regum Angl' & confirmac' nostram concessas, coram eisdem Majore & Ball' nostris retorn' fuit placitum, falsum fecer' sacramentum, sicut idem J. nobis graviter conquerendo monstravit necne, & interim, &c. (a).*

And upon false Verdict given in London upon *Nisi prius*, the Form of A the Writ is such (b):

*Parati sacramento recogn' si jurat' per quos quedam inquisitio nuper sum' fuit coram nobis, & capt' coram R. de M. tunc uno Justic' ad placita cor' nobis tenend' assign' associato sibi A. de F. apud S. Martin Lond' juxta libertat' civitatis præd' per breve nostr', &c.*

If false Verdict be given in a Corporate Town, upon a Plaint with- B. out Writ, then it is such :

*Parati sacramento recogn' si jurat' per quos quedam inquisitio nuper capta fuit coram nobis apud Linc' sine brevi nostro inter A. de D. de quadam transgressione, &c. illata, de qua quidem transgressione idem B. convict' fuit, & 201. eidem A. pro damnis suis in hac parte adjudicat' existunt ut dicit' falsum fecer' sacrament' sicut idem A. &c.*

And if false Verdict be given within the Verge, then the Writ shall C be such :

*Parati*

(a) *Who shall have an Attaint.*

The Testator entred into Religion, and was deraigned ; *Quære*, if Attaint lies against the Heir or Executor, or if the Executor brings Attaint, if the Testator shall be restored ; as if the Son is barred in a *Mortd'ancester*, the Daughter shall have an Attaint, and there the Judgment was against her Brother of the half Blood only. *Kelwey* 119. So a special Heir shall have Attaint. 22 H. 6. 28.

(b) See 7 H. 6. 32. on a false Oath given in London, the Sheriff returned, that by the Custom of London, no Attaint shall be

brought of a Verdict given by the Commons there, and therefore he could not execute the Writ, *Salvis Libertatibus Civitatis prædictæ*, and out of the Chancery issued a Writ *de Libertatibus allocandis*, upon which issued a *Venire facias* to the Mayor and Sheriffs, to come and maintain their Liberties, and an *idem dies* given to the Parties, and they came, and their Liberties were allowed, and the Plaintiff took nothing by his Writ, but was awarded to Prison. 13 E. 4. 3. See the Stat. 11 H. 7. 21. Stat. 37 H. 8. cap. 5. *Dyer* 81.



*Parati sacramento recogn' si jurat' per quos quædam inquisitio nuper capta fuit coram Senesc' & Maresc' hospitii nostri apud C. sine brevi nostro inter K. & prædict' T. de quadam transgressione eidem R. per præf. T. apud C. infra virgam nostram ut dicebat' illata, falsum fecer' sacramentum, &c.*

D (a) And if a Man be condemned by false Verdict in Debt, or Damages, then if he sue an Attaint, he shall have a special Writ unto the Justices, to bail him upon Sureties taken, that if the Attaint pass against him, he render himself to Prison, or satisfy the Debt, and the Writ is such (b) :

*Rex dilect', &c. E. de S. & sociis suis salut' Cum I. arrainerit cor' nobis per breve nostr' quandam jurat' 24. ad convincend' jurator' per quos quædam inquisitio nuper capta fuit cor' nobis apud W. per breve nostr' inter R. & præd' J. de quadam transgr', &c. illat' ut dicit', ac ex parte ipsius J. accepim' quod ipse pretextu processus in præd' placito de trans. facti captus est, & in prisiona Marescalciæ nostræ cor' nobis detentus, quo minus jurat' suam præd' prosequi possit, super quo, &c. adhiberi ; Nos nolentes quod idem J. in prisiona nostra præd' sic detineat' quo minus jurat' suam præd' proseq' valeat, ut debebit : Vobis mandamus, quod si idem J. invenerit cor' vobis suffic' manucapt' qui eum manucapiant habere cor' nobis ad prosequend' attinctam præd' & terminata attincta illa, si cont' ipsum transierit, vel ipse attinctam illam non fuerit prosecutus, quod reddat se prisionæ nostræ prædict' & satisf. tam nobis de eo quod ad nos, quam præf. R. de eo quod ad ipsum pertinet in præmissis, & ulterius faciat & recipiat quod Curia consideraverit in hac parte, tunc ipsum J. a prisiona nostra prædict' deliberari fac' per manucapt' hujusmodi, ad prosequendum attinct' su prædict'.*

E (c) And if a Man vouch in a *Præcipe* quod reddat, one who entreth into the Warranty and pleadeth, and loseth by false Verdict, he shall have an Attaint, and the Writ shall make Mention of the Voucher ; And so if a Man pray to be received for Default of Tenant for Life, and is received and pleadeth, and loseth by false Verdict, he shall have a Writ of Attaint, and the Writ shall mention the Receipt.

F (d) And so if it pass against the Plaintiff by false Verdict, and he bring an Attaint, the Writ shall make Mention of the Voucher, and of the Receipt ; and so if he in the Reversion join with the Tenant for Life by Aid Prayer, and they lose, by which he in the Reversion brings an Attaint, he shall make Mention in the Writ of the Aid Prayer ; and also in

I i 2

(a) And so it is in C. B. but some held that a Writ should be sent to the Warden of the Fleet, to have the Prisoner in Court quolibet Die pendente placito. Dyer 193. See and Note for the Form of this Writ, and that C. B. may send to the Marshal of B. R. for such a Prisoner, and in what Form it shall be, Dyer 364.

(b) If the Plaintiff loses against the Garnishee in Detinue, and thereon brings Maintenance against a Stranger, the Writ shall make Mention of the Garnishment.

21 H. 6. Bro. 90. See Attaint brought against the Vouchee by the Tenant ; Exception, for that he did not mention the Voucher ; sed non allocatur. 22 E. 3. 11. See 9 H. 6. 39

(c) See 9 H. 6. 38. 11 H. 4. 5. 4 Aff. 71. 4 E. 3.

(d) If a Parson prays in Aid of the Patron and Ordinary, and loses by Action tried, the Parson only shall have Attaint, and not the Patron. 19 H. 6. 75. 22 H. 6. 28. See 9 H. 6. 39. 38.

8 H. 4. 4.  
11 H. 4. 51.  
Skeen. 34.  
H. 6. 31.  
11 H. 4. 50.  
Gascoigne.  
17 E. 2. Recovery in Value 32.  
9 H. 6. 38.  
Yet he shall not mention if the Tenant for Life be dead.

4 Aff. 7.  
4 E. 3. 54.  
Br. Attaint.  
49.

in Affise, if it be discontinued and afterwards Re-attachment sued, and he loseth by false Verdict, the Writ of Attaint shall make Mention of the Re-attachment, because he reviveth the Original of Affise.

9 H. 6. 38.  
39.

But if the Defendant in a Writ of Detinue pray Garnishment, who cometh and pleads, and the Plaintiff loseth, by which he bringeth Attaint against the Garnishee, the Writ of Attaint shall make Mention of the Garnishment. That is well debated *M. 9 H. 6.* in the Title Attaint in the Abridgment.

But, saving the Opinion of the Book, it seemeth the Writ of Attaint shall make Mention of the Garnishment, &c. for the Defendant in a Writ of Detinue who sueth the Garnishee, is in manner out of Court; and when the Garnishee comes, the Plaintiff counteth upon his Original Writ, which is the Writ of Detinue, and the Garnishee shall answer to that Count; and the Writ of Garnishment is but for to make him come in and answer to the Plaintiff to his Original and Count, and when he comes and pleads, he pleads unto the Plaintiff's Count, which is upon the Original, by which the Plea which is between the Plaintiff and the Garnishee is upon the Original Plea, as it seemeth; *tamen quære.*

21 Aff. 19.  
Br. Attaint  
57. 23 Aff.  
11.

[107.]  
Challenge  
132. Thorp.  
11 E. 3. At-  
tain 16. ac.

(a) And if a Man plead a Deed in Bar, in which there are Witnesses, and the Deed is denied, for which Process is awarded against the Witnesses, which join with the Jury, and it is found the Plaintiff's Deed; now he shall not have an Attaint, &c. because the Witnesses do affirm the Verdict by their Testimonies. But if it be found not his Deed, then the other Party shall have an Attaint, for the Witnesses cannot prove a Negative, but of the Affirmative they may have Notice whether it be his Deed or not. A Man shall have an Attaint in special Cases, where every Word of the Verdict is true; as if a Man hath had Common appendant unto his Land, Time out of Mind, and he bring an Affise of the Common, and make Title that he hath had Common, Time out of Mind, &c. without speaking of the Appendancy, and it is found for him; the Defendant shall have an Attaint, for the Plaintiff's Title is for Common in gross, and not Common appendant; and yet the Words of the Verdict are true, that he hath had Common Time out of Mind, &c. but not in such manner as shall be taken by the Title.

10 E. 4. 17.  
ac. Co. 291,  
292.

10 E. 4. 17.  
24 H. 8. Br.  
Attaint 96.

And so if a Man have a Rent as Forester in Fee of such a Forest A Time out of Mind, and in Affise of that Rent he make Title thereunto, that he hath had a Rent out of that Land Time out of Mind, &c. without saying as Forester in Fee, &c. and it be found for him, the other Party shall have an Attaint upon that Verdict, altho' the Words of the Verdict be true, for he hath not had such Rent by Prescription as shall be intended and taken by his Title.

(a) If



**B** (a) If a Man recover outrageous Damages by Verdict, but he releaseth Parcel of the Damages before Judgment, and hath Judgment for the Residue, the Defendant shall not have an Attaint for those Damages which are released (b). 35 H. 6. 30.  
11 E. 4. 5.  
13 E. 4. 2.  
14 H. 7. 5.  
9 H. 6. 2.

**C** (c) And in a Writ of Waste the Plaintiff shall have a Writ to enquire of the Waste, who if they give false Verdict by which the Plaintiff recovereth, the Defendant shall have an Attaint, *per Cur' M. 2. H. 4.* 3 H. 6. 29.  
3 Martin ac.  
48 E. 3. 19.  
cont. 33 H. 6.  
25. 2 H. 4.  
2. *per Curiam*,  
so of Error.  
18 H. 8. 1. 21  
H. 6. 56. 28.  
H. 8. 5. 10.  
38 E. 3. 12.

But I do not see how the same can be warranted by any Statute, which giveth the Attaint, because the Writ of Enquiry is awarded by the Court *ex Officio per Sacramentum proborum, &c.* And the Sheriff may make the Enquiry by the Oaths of six or eight Persons of the Waste, and he is not bound to take twelve Persons. *Quære* of this.

and 27. Br. Collusion 18. upon Writ of Enquiry of Waste for an Abbot, *Quale jus* shall prove it is no Verdict but an Enquiry. Issue, which

**D** (d) The King shall have an Attaint upon a false Verdict passed against him as well as a common Person. 42 E. 3. 26.

**E** (e) In Trespass against two, one cometh and pleadeth Not guilty, and is found guilty, and afterwards the other cometh and pleadeth Not guilty, and is found guilty by another Enquest; now in this Case the first Jury shall assess all the Damages for the Trespass, and the Defendant in the last Enquest shall have an Attaint of the Damages assessed by the first Enquest, if they be outrageous or excessive, &c. 34 H. 6. 32.  
ac. 12 H. 4.  
5. In Waste  
against two,  
one made  
Default, and  
the other  
pleaded, he

who made Default shall not have Attaint. 43 E. 3. 36. 34 H. 6. 12. Morle cont. 39 H. 6. 1. ac. 8 H. 4. 23. Tirwin.

**F** (f) Tenant by Statute-Merchant shall have an Attaint if he be barred in Affise by false Verdict, or found against him by false Verdict, where he is Defendant in the Affise. 21 Aff. 16.  
Br. Attaint.  
64.

**G** (g) If a Man recover in a *Præcipe quod reddat*, against a Tenant by false Verdict, there have been divers Opinions whether the Tenant shall have 36 H. 6. 13.  
ac. in perso-  
nal Actions.  
21 H. 6. 54.

(a) And therefore, tho' he cannot abridge the Damages given on such a Verdict. 9 H. 6. 2. yet he may have an Attaint for too small Damages. *Ibid.*

(b) And see accordant to this Case, a Release of Damages shall oust the Attaint, 14 H. 7. 5. 12 E. 4. 5. 13 E. 4. 2. 5.

(c) So agreed by *Martyn contr. Babington*, for by him, 'tis more than an inquest of Office, for that the Judges are bound to render Judgment according to the finding of the Inquest, as in this Case of Waste; but on an Inquest to inquire of Damages, there it is only for Information, and the Court may increase or diminish the Damages. 3 H. 6. 29. See 2 H. 4. 31. 48 E. 3. 19. *contr.* 7 H. 4. 38.

(d) See 42 E. 3. 26. 4 Mar. Bro. Information 27. 11 Co. 5. 6.

(e) It seems, that in this Case, as to the

Damages, they shall join in an Attaint, adjudged 25 H. 6. 23. but as touching Parcel, if they be found by one Verdict Guilty, they may join, as 18 E. 3. 25. 30 E. 3. 1. or they may sever. 35 H. 6. 21. *per Abbt.* 46 E. 3. 81. *per Finchd.* See 1 H. 5. 13. 44 E. 3. 7. 44 H. 6. 32.

(f) *A.* sued an Execution against *B.* on a Statute-Merchant, *B.* brings an *Audita Querela*, which on an Issue is found for *B.* *A.* brought an Attaint, and adjudged that it lies, and if the false Oath be found, Execution shall be awarded for him. 21 E. 3. 59. See 21 Aff. 16. 21 E. 3. 47. and 43 Aff. 41. how if he shall be acquitted on the Issue.

(g) See 41 E. 3. Attaint 27. 21 H. 6. 55, 113. 34 H. 6. 11. 12 H. 6. 6. *Abbt.* 105. Attaint 70.

have an Attaint before Execution sued out against him. *W. 41 E. 3. Lib. Aff. 21. H. 6. 60.* But the Statute of *1 E. 3.* saith, that a Man shall have an Attaint of Damages before Execution sued of them, before which Statute it seemeth he could not have Attaint of them. But in the Time of *E. 1.* the Defendant sued forth an Attaint for Damages upon false Verdict given against him in a Writ of Trespass before the Plaintiff sued Execution of the Damages, which see in Title Attaint in the Abridgments, *temp. E. 1.* And also by the same Reason, if a Man do recover Land, the Tenant shall not have Attaint before Execution.

34 H. 6. 13.

26 H. 8. 2.

31 H. 6. 12.

35 H. 6. 39.

22 E. 3. 10.

Br. Attaint

42.

(a) And *Nontenure* hath been pleaded, and admitted a good Plea divers times in an Attaint. And on the other side if the Tenant shall not have an Attaint before Execution sued, or Entry made by the Demandant or his Heir, then perhaps they will not enter until the Jurors are dead, and then the Tenant shall be without Remedy by Attaint.

5 Aff. 24. E.

3 34. Br.

Attaint 48.

6 Aff. ib. Br.

52.

(b) If a Man who was Tenant do recover in Attaint, the Judgment shall be that he shall be arrested, &c. which could not be if the Demandant hath not entred, and when he himself is Tenant in Possession.

And I think it the better Opinion, that if in Trespass the Defendant plead Villainage in the Plaintiff, &c. and he is found frank unto his Damages of 20 s. the Defendant shall not have an Attaint for the Smallness of the Damages, &c. But in a (c) *Precipe quod reddat*, if the Tenant plead *Non-tenure*, and it be found against him, he shall have an Attaint, &c.

14 Aff. 2. Br.

Attaint 59.

10 E. 4. 13.

8 H. 4. 18.

(d) An Attaint shall be maintainable against the Terre-Tenant without naming him who was Party to the Record : Otherwise it is in

9 H. 6. 47. 34 H. 6. 36. 35 H. 6. 30. contr. is admitted.

a Writ

(a) See 31 H. 6. 12. 14 Aff. 2. 26 H. 8. 2. 8 E. 4. 19. 6 E. 3. *Waste* 25. contr. *Vide ant.* 97.

(b) And also to the same Issues. 30 E. 3. *Judgment* 140. 40 Aff. 20.

(c) He who pleads *Nontenure*, shall have an Attaint. 40 Aff. 20. 23. per *Fitzb.* and therefore, where the Party himself pleaded *Nontenure* of Parcel, the Plaintiff was driven to maintain his Writ. 21 E. 10. See in an Attaint brought against him who recovered *Nontenure*, held no Plea. 8 E. 4. 19, viz. if he has once Execution, per *Prifot.* 35 H. 6. 44. See 10 Aff. 8. 31 H. 6. 12. 26 H. 8. 2.

(d) Yet see in an Attaint by him who was Plaintiff against him, who was Tenant in the Original, *Nontenure* held a good Plea, except the Plaintiff had freshly sued. 6 E. 3. 32. 21 H. 6. 55. per *Ascue*, &c. but 'tis there agreed, that *Non-tenure* is a good Plea against him who recovers. But 'tis certain, that Attaint may be brought against the Tertenant alone, and

if it pass against him, yet he shall not be taken; contr. of him who was Party. 8 H. 4. 21, 22. See *Jointenancy* in Attaint against him who recovered Part; contr. in Attaint against the Tenant, where the Party was barred. 26 Aff. 12. But if after the Writ of Attaint purchased, the Record be removed by Writ of Error, they shall yet proceed in *C. B.* *Dyer* 281. 284. See 6 Aff. 10. 40 Aff. 20. 4 E. 2. *Attaint* 67. contr.

✶ The Record of an Assise of fresh Force was sent by Writ out of Chancery to *C. B.* and Attaint was brought on the Record there. 21 E. 3. 10. See *Dyer* 81. and there it seems, that if Issue be joined in *C. B.* on a Matter triable in the County *Palatine*, and 'tis there tried, and the Record removed, that Attaint lies here. 19 H. 6. 53. See *Dyer* 250. that Attaint lies in *C. B.* on a Record in *B. R.* sent by *Mittimus* into *C. B.* and so on a Verdict in *S. accario*.



a Writ of *Recordare* ; for that shall be sued against him who was Party, or his Heir or Executor, if it be a Personal Action, otherwise it shall abate.

**L** Attaint doth not lie upon false Verdict given in an Appeal of Maim, or Appeal of Felony or Murder.

**M** An Attaint may be sued in the Common Pleas, if the Record be there ; or it may be sued in the King's Bench upon a false Verdict given in the Common Pleas, if the Record be removed into the King's Bench.

**N** A Recovery was in an Assise brought in the King's Bench, and afterwards that Record was sent unto the Common Pleas, and the Party sued an Attaint upon the Record in the Common Pleas. *Vi. 8 E. 2. H. Affise. Iter. Kan.*

Attaint was sued upon a false Verdict given against the Defendant when he claimed Liberty, and adjudged that he should have it. *H. 15 H. 3.*

**O** (a) And the Writ of Attaint may be sued out of the Common Pleas or King's Bench, upon a false Verdict given in the same Court, as well as out of the Chancery, *qd. vi. 30 E. 1. Itin. Cornub.*

**P** In a Writ of Entry brought in *Suffex*, the Defendant pleaded a Release in *London*, which was found against him in *London*, for which he brought an Attaint in *London*, and it was maintainable, *qd. vi. M. 18 E. 1. F. Brev. 827.*

**Q** (b) If the King recover by false Verdict, he shall have Attaint against the *Petit Jury* only, as if the King do recover by erroneous Process, &c. the Party shall have a Writ of Error of the Judgment, and shall not name the King, because he is always present in the Court.

**A** The Vouchee or Tenant by Resceit, or he in the Reversion where he joineth to the Tenant by *Aid Prier*, shall have Attaint if he lose by false Verdict (c) : And if Tenant for Life lose by false Judgment, he in the Reversion shall have an Attaint or Writ of Error living the Tenant for Life, by the Statute of *9 R. 2. cap. 3.*

**B** (d) If the Defendant in Trespass plead Villainage in the Plaintiff, and he saith that he is Frank, and is so found by Verdict, and afterwards the Defendant dieth, his Heir shall have an Attaint to avoid this Estoppel and false Verdict, although it was given in a personal Action.

In

(a) See *21 E. 3. 3.* If an Assise be taken before Justices assigned, and adjourned for Difficulty into Bank, if an Attaint be sued, 'tis necessary to sue a Writ to the Justices, to remand the Record before the Justices assigned in *Pais*, and when they have the Record, there may issue an Attaint on the Rolls there.

(b) Note ; In Suits *pro Domino Rege & seipso*, Attaint and Error granted in Parl. *Rot. parl. 21 E. 3. No. 24. Quare.*

(c) But the Writ ought to mention the Voucher, and also expressly, that he en-

tred into Warranty, and not only by a Supposal. *22 E. 3. 4.* See Attaint by him in the Reversion, and by Resceit without Mention made of the Death or Life of the Lessee, and yet the Judgment is divers (different.) *4 E. 3. 54.* See *Dyer 241. b. 44 E. 3. Attaint 22. Ant. 99. E.*

(d) See accordant *13 E. 4. 2.* See *8 H. 4. 16.* the Heir shall have an Attaint on such a Trial in a *Homine Replegiando*, but not in Trespass. *19 H. 6. 18.* See *33 H. 6. 19. 45 E. 3. 1. 14 H. 7. 5. 13 E. 4. 2. 33 H. 6. 19.*

*34 H. 6. 36. 35 H. 6. 30. the contr. is admitted. 8 Eliz. Dy. 250.*

*16 Aff. 4. Br. Attaint 60. 44 E. 3. 2. 44 Aff. 20. 21 E. 3. 10. Br. Art. 32. 21 E. 3. 3. Ibid. 51. H. 15. H. 3. 21 E. Dy. 364.*

*20 H. 7. 6. [108.] Ant. 106. E.*

*2 H. 4. 4. 16 E. 3. Error 72. 20 E. 3. Error 2. 21 H. 6. 291.*

8 H. 4. 13.  
Skyene.

21 H. 6. 55.  
21 E. 3. 10.  
Br. Attaint.  
32. It shall  
be tried by  
Twelve, and  
not by the  
Attaint.

19 Aff. 13.  
Br. Attaint.  
63. 32 Aff.  
13 Br. At-  
taint 75.

14 Aff. 2. Br.  
Attaint 59.

In an Attaint upon a Recovery in *Præcipe quod reddat*, the Defendant C pleads *Non-tenure*, and the Demandant saith, that he made a Feoffment unto unknown Persons, &c. and that he brought the Action within the Year, and with that, that he will aver that the Defendants took the Profits the Day of the Writ purchased; and the Defendant saith, that he did not take the Profits, &c. (a) Now this Issue shall be tried by the Attaint; and if they give false Oaths, he shall have an Attaint upon that Verdict; by *Newton*: As if in a Writ of Right the Tenant plead a collateral Warranty, made within the same County, it shall be tried by the Grand Assise; and if they give false Verdict, he shall have an Attaint, because the same is out of the Point of Assise; by *Newton*, Tr. 21 H. 6.

(b) Nonsuit in Attaint after Appearance is peremptory, and he shall D not have a new Attaint; and so upon a *Retraxit*, if the Demandant say he will no more sue his Attaint, and that he entred upon Record, he shall not after have another Attaint.

(c) If a Man have a *Præcipe quod reddat* against divers, by several E *Præcipes*, and by Enquest it is found for the Demandant; he shall have a Writ of Attaint against the Tenant, &c. But if it is found against the Tenants, he shall have several Attaints; for as unto all of them, it is a several Enquest to try their Issues severally.

If the Demandant be barred in a *Formedon*, and afterwards releaseth F all Actions, or all his Right in the Land, yet his Heir shall have a Writ of Attaint.

## And

(a) For the Issue arises on the Point of Attaint, and therefore shall be tried but by 12. 21 E. 3. 10. but if in Attaint in Assise, the grand Inquest inquire of Damages, no Attaint lies thereof. 8 H. 4. 22. See 12 H. 6. 66. an Issue collateral, real, as Jointenancy, &c. shall be tried by the 24; and by *Babb*. Attaint there lies, if they take a false Oath by Assise. See 27 Aff. 61. if in Attaint the Tenant pleads *Non-tenure*, &c. he shall plead over, that he made a true Oath, &c. See 22 H. 6. 55. F. Attaint 65.

(b) And the Plaintiff shall be amerced, and taken. 6 Aff. 5. See *Co. Lit.* 139. a. 19 Aff. 13. 34 Aff. 6. and 9 *infra* E.

(c) See the like Case. 35 H. 6. 22, &c. per *Prifot*, and 18 E. 3. 25. If in an Assise against 2, on *Nul Tort* pleaded, the one is acquitted of the Disseisin, but he is Tenant, and the other is found Disseisor, they shall have several Attaints; and so if one is found Disseisor of Part, and the other of the Residue, per *Cum*. 30 E. 3. 1. In Rescue against two, they plead Not guilty, and found against them, they shall join in Attaint; but in an Assise against several

Tenants on a false Oath as to Parcel, they shall sever in Attaint; *contr.* if it be only for Damages, per *Tushd. Quere*; and see they may join in Error. 3 H. 4. 16. he who is acquitted of a Disseisin may join in Error with him who is found Disseisor, but not in Attaint. 2 E. 3. 3.

A Writ of forcible Entry and Detainer against A. B. and C. and all found Guilty of the forcible Entry, but C. only of the forcible Detainer; they shall join, &c. *Dyer* 141. See 29 Aff. 9. a Joinder in Attaint by him who disclaims, him who took on him the Tenancy of Parcel, and him who took the Residue jointly with a Stranger, and the Writ found true. See 19 R. 2. *Brief* 926. Tenant by Stat. or Lessee for Years, or a Guardian in an Assise against him, and he who has the Freehold, and one is acquitted of the Disseisin, but the other found Guilty, they shall join in Attaint as it seems, for he has lost his Term, and he has no other Remedy, because he was Party to the Judgment. 43 Aff. 41. See 14 Aff. 20. 35 H. 6. 22.



**G** And so if the Father be Nonsuit upon an Attaint upon a Writ of Formedon, he there shall have an Attaint.

**H** And a Man shall have an Attaint before Justices of Oyer without Original Writ, upon a Bill only sued before the same Justices. *T. 5. E. 2. Attaint 68.*

**I** If false Verdict be given in Assise of Novel diff. then if the Plaintiff will sue an Attaint, he ought to have such a Writ.

*Rex Ric' Lincoln' salutem. Si A. fecit te securum tunc sum', &c. 24 milites de visis S. quod sint coram Justiciariis nostris ad primam Assisam, cum in partes illas venerint. Vel sic: coram dilectis & fidelibus nostris R. de W. & B. de F. & his quos sibi associavimus de certis, &c. quos idem R. & B. tibi scire fac' (a) parati sacramento recogn' si J. injuste & sine judicio disseisavit prefat' A. de libero tenemento suo in S. vel de communia pasturæ sue in . que pertinet ad liberum tenementum suum in eadem villa, post primam translationem Domini H. filii Regis J. in Vascon' unde idem A. queritur quod juratores Assise Novæ diff. que inter eos sum' fuit & capta coram nobis apud W. per breve nostrum, vel coram prefat. R. & B. vel coram dilect' & fidelibus nostris W. de H. & sociis justiciar' nostris ultim' itinerant' apud L. in com' tuo per breve nostrum falsum fecer' sacramentum, & interim diligenter inquiras. qui fuer' Jurator' illius ass. & eos tunc habeas coram pref. Justiciariis ad prefat' ass. vel coram R. & B. Et sum', &c. præd' I. vel sic: Præd' I. H. qui præd' tenementa nunc tenet; Quod tunc sit ibi auditur' illum recognitionem, & (b) habeas ibi nomina Militum, & hoc breve.*

**K** And if a Man lose by false Verdict in Assise before Justices of Assise, if he will sue an Attaint before the same Justices, he ought to sue a Patent directed unto the same Justices to give them Authority to hold

K k

Plea

(a) Yet see it adjudged, that on such Writ the Party may assign a false Oath on any special Plea in the same Assise. 11 H. 4. 5. 265. Note, If on a special Issue they find for the Plaintiff, and inquire over of the Seisin and Disseisin, and that is also found, he may assign a false Oath in the Disseisin found, but in no other Point; per *Thorn. Hill.* and *Hankf.* For he ought to have a special Writ for that, or else a general Writ *quod Furat' in Assise apt' falsum fecer' Sacramentum*; Or they may assign the false Oath, in what Point they will. 11 H. 4. 27. And note there in Assise against two, the one pleads to the Writ, and the other to the Assise; if he who pleads to the Assise brings Attaint, he cannot assign a false Oath in any Point put in Issue by his Companion. But they may have an Attaint in Common, and then each may assign in that which belongs to him; adjudged. And yet by a Plea to the Writ by one, if found for him, the Writ abates as to both. 29 Aff. 9. adjudged, accordant; so 11 H. 4. 65. and yet see by *Hull*, the Tenant may assign a false

Oath in an Assise between the Plaintiff and a Disseisor; but adjudged, that he cannot assign it on a Plea to a Writ of Assise brought by another Name. 11 H. 4. 52, 65.

(b) And note; In this Writ the Jurors shall not have the View, for the Writ does not require it; see 3 H. 4. 15. in an Attaint by the Plaintiff in Assise; yet *contra* 8 E. 2. Aff. 396. In Attaint by the Defendant in Assise. Note in this Attaint, if it be brought by him who was barred in the Assise, he shall recover the Land, and his Damages and Costs lost in the first Assise, and the Issues 'till the Judgment rendered: But if the Tenant in the Assise had pleaded in Bar, *qua ne const' ouster*, the Attaint shall only inquire of that Matter, in which the false Oath is assigned, and not of the Seisin and Disseisin; adjudged 8 H. 4. 22. Note; If the false Oath be found, the Justices may inquire of the Damages by another Enquest. *Ibid.* See the Judgment in *Dyer* 235. *Quod recuperaret seisinam. Sed non per visum Furator'.*

Plea thereof; or he may sue a Patent unto other Justices to hold Plea of that Writ of Attaint; and the Form of the Patent is such:

*Rex dilectis & fidelibus suis R. & B. salutem. Sciatis quod constituimus L vos, &c. Justic' nostros, una cum his, quos vobis associavimus ad jurat' 24 Milit' capiend' quam A. arrain' coram vobis per breve nostrum versus I. ad convincend' Jurator' in Assisa novæ disseisin' que inter eos sum' fuit, & capta coram vobis apud W. per breve nostrum de tenementis in S. vel de communi pastur' in S. vel sic: Coram vobis præfat' R. & dilecto & fideli nostro S. nuper Justic' nostris, &c. apud W. per breve nostrum de tenementis in S. & ideo vobis mandamus, quod ad certos, &c. provideritis, jurat' illam capiatis, faciend' inde quod ad justitiam pertinet secundum legem & consuetudinem regni nostri; salvo nobis amerciamentis inde provenient'. Mandamus enim Vic' nostro Lincoln' quod ad certos diem & locum, quos ei scire fac' jurat' illam coram vobis venire fac'. In cujus rei testimonium has literas nostras fieri fecimus patentes. Teste, &c.*

And a Man shall have a Writ of Attaint upon a false Verdict in an Assize of Nufance. *Quare levavit vel prostravit quoddam stagnum in N. &c. vel quoddam fossatum, vel quandam sepem, vel divertit cursum aquæ in N. ad nocumentum, &c. in eadem villa;* and the Form of the Writ is such:

[109.] *Si A. &c. tunc sum', &c. parati sacramento recognoscere, si J. injuste & sine judicio levavit, vel prostravit quoddam stagnum in N. vel quoddam fossatum, vel quandam sepem, vel divertit cursum cujusdam aquæ in N. vel arctavit, vel obstruxit quandam viam in N. ad nocumentum, &c. in eadem villa, post primam, &c. unde idem A. queritur, quod juratores ass. que inter eos sum' fuit & capta coram, &c. apud N. per breve nostrum falsum, &c. & interim, &c. & sum', &c. Et habeas, &c.*

And it is a Rule in the Register, That in an Attaint upon an Assize A of Novel Diff. a certain Day shall be set, as in an Assize, *Die lune vel alio die in Crastin' vel in Octab' vel in quinden' Pasch'*; but it behoveth that the Tenant have Garnish out by fifteen Days in the Attaint, for the Statute doth not give lesser Time, but only in Assize before the King.

And there is another Form of the Writ, if the Assize be adjourned B into the Common Pleas, and taken there before the Justices of the Common Pleas, and the same appeareth in the Register.

(a) And another Form is of the Writ of Attaint, where the Assize is C brought against the Husband and Wife, and the Wife is received for the Default of the Husband, and pleadeth and loseth by false Verdict.

And

(a) See 11 H. 4. 51, and 65. per Brian; Husband and Wife brought a general Attaint on an Assize, where they had pleaded a Record, but failed at the Day. The Wife is received and adjudged (well). For in an Assize, the Husband, notwithstanding his Failure of Record and Default, &c. the Wife is Party to the Assize; for after such Resceit, the Seisin and Disseisin, it

shall be inquired, and of Damages; but if it be in a *Præcipe*, it ought to be a special Attaint, because there, by the Husband's Default she is out of Court; but here, if the one or the other be in Court, it is sufficient. Note; In Attaint against a Vouchee, Tenant by Resceit, either by him who joins in Aid, or by him who is received to sue sole; it was agreed that the



D And another Form of Attaint is, where the Tenant in the Assize pleadeth the Release of the Plaintiff, or of his Ancestor in Bar of the Assize which is found against them, upon a false Verdict.

E And another Form of the Writ of Attaint is, where the Verdict passeth by *Nisi prius* out of the Common Pleas.

F And another Form of the Writ of Attaint is, where the Assize is summoned before certain Justices, and after it is taken before other Justices by a general Commission, and a false Verdict is given upon the same.

G And another Form of the Writ is, If an Assize be summoned before divers Justices, and afterwards is taken by any of them by Virtue of the Writ of *Si non omnes*, then the Party shall have a Writ of Attaint, rehearsing the whole Matter.

H And if a Man, upon Verdict given in an Assize before the Justices of Assize sueth an Attaint before the same Justices, or (a) other Justices, he may have a Writ of Association directed unto the same Justices before whom the Attaint is laid; and the Writ of *Si non omnes*, as he shall have in Assize, &c. who was Plaintiff there: And he shall have a Writ Patent directed unto him who is Associate, &c. which Writs do appear in the Register after the Writs of Assize of Novel disseisin.

But it appeareth by one Writ in the Register, that there was a Constitution made, which required, that the Assize and Jurors and Certificate shall be taken before the Justices commonly assigned: By which it seemeth, that a Man shall not have an Attaint upon a false Verdict given in Assize, but before the Justices of Assize, or before the Justices of the Common Pleas, if the Record be removed thither, or before the Justices of the King's Bench, if the Record be removed before the King; and the Form of the Writ is such:

*Rex dilect' & fidel' suis F. & G. de E. salutem. Licet nuper constituerimus vos Justic' nostros ad jurat' viginti & quatuor Milit' capiend' quam J. quæ fuit ux' E. arrain' cor' vobis per brev' nostr' versus E. quæ fuit ux' A. de L. ad convincend' jurator' Ass. no' diss. quæ inter ipsum A. & præf. J. & alios, &c. sum' fuit & capt' apud L. cor' dilectis & fidelibus nostr' R. & B. nup' Justic' nostris apud ass. &c. assign' per brev' nostr' de tenement' in S. Quia ea constitut' prædict' facta fuit cont' form' statuti nostri apud Northampton' nup' editi, in quo continetur, quod assise juratæ, & certificationes cor' Justic' communiter assign' & non aliis capiantur: Quod quidem statut' in omnibus & singulis suis articulis volent' inviolabiliter observari Vobis mandamus, quod de captione juratæ prædict' pretextu commiss. nostræ sic fact' vos nullatenus intromittatis. Teste, &c. Quod quidem statut' fact' fuit Anno 2 Ed. 3. Regis Angl' cap. 2.*

21 E. 3. 3.  
Br. Attaint  
31.  
21 Ass. 7. Br.  
Certificat de  
Assise 8.  
21 E. 3. 12.  
Br. Att. 32.  
80 H. 6. 4.  
No Attaint  
upon Teno-  
rem recordi,  
but upon the  
Record it  
self.

K k 2

By

the Writ should not be general in *Loquela quæ fuit int' A. & B. per breve nostrum*: But it is necessary to have a special Writ, making Mention of the Original, and of the Tenant, &c. *per Cur'*; and so by *Pastor*, in an Attaint against the Garnishee; but by *Babb.* and *Strange*, a general Writ shall be good, without Mention of the Default;

if the Case be so, that the Garnishee makes Title to the Land, &c. for the whole Judgment shall be against the Garnishee, and he is not to have any Avail, but Prejudice by the Attaint. 9 H. 6. 38.

(a) See *per Hankf.* That Attaint belongs to B. R.

By which it appeareth, That he shall not have a Writ of Attaint by Commission, &c. before other Justices, but only before Justices of Assise, or of the Common Pleas, or King's Bench, as before is said.

(b) The Form of a Writ of Attaint upon a Redisseisin is such: 1.

*Rex Vic', &c. Si R. fecerit, &c. tunc sum', &c. 24 legal' Milites, &c. usque ibi parati, &c. Si juratores per quos quedam inquisitio capta fuit coram E. tunc' Vic' com' tui, & custod' placitorum corone nostr' ejusdem per breve nostrum apud W. inter R. & predict' B. de quadam rediss. eidem R. per pref. B. fact' ut dicit' de uno mesuagio & 9 acr' terræ cum pertin' in W. falsum fecerunt sacramentum sicut idem R. nobis gravit' querens monstravit, & iterum diligenter inquiras, qui fuerint juratores illius inquisitionis, &c. & eos tunc habeas coram pref. R. & J. Et sum' predict' B. quod tunc sit ibi ad audiend' ill' recogn' & habeas ibi sum', &c.*

Vi. 8 Eliz.  
Dyer 25.

And it seemeth, That this Writ of Attaint ought to be sued before the Justices of Assise of the said County, and that they shall have a Patent for the same directed unto them, and that the Record shall be brought before them. But if the Record be removed into the Common Pleas, then it seemeth he shall have his Attaint there.

And it appeareth by *Glanville*, That a Man shall have an Attaint, and K the Manner how the Jurors shall be punished.

42 E. 3. 25.  
8 H. 4. 23.  
Gascoigne.

And if any Jurors be convict of false Oath, they shall be imprison- L ed, and then they ought to sue unto the King to pay a Fine for their Imprisonment, and when they are agreed with the King, they may sue a Writ for to remove the Record before the King in the King's Bench, and the Writ shall be such:

By this it ap-  
peareth that

they shall not forfeit their Lands in Fee, as upon *Pramunire*, but for their own Lives by *Br. Attaint* 100 & 95. upon the Book of 22 E. 4. 1.

[110.]

*Rex dilectis E. & sociis suis, &c. salutem. Cum W. de M. & alii de falso sacramento per ipsos facto in quadam inquisitione capta apud W. coram W. de B. & sociis suis nuper Justic' Dom' Regis, &c. de Banco per breve nostrum inter R. peten' & W. de M. tenent' de manerio de B. cum pertin' excepto uno gardino in eodem maner' coram dilectis & fidelibus nostris W. de B. & sociis suis, &c. de banco, per quandam juratam. 24, convicti fuissent, & ea occasione prisonæ nostr' de Fleet adjudicat', ac bona & catalla sua, terr' & tenementa sua in manu nostra seista; Nos record' & processum negotii præd' cum omnibus ea tangent' una cum corporibus præd' W. & aliorum coram nobis certis de causis venire fecimus, ac jam ex parte ipsius W. nobis est supplicat', & cum ipse in prisona hujusmodi occasione præmissorum jam diu detentus fuisset & adhuc existit, velimus ab eo rationabil' finem pro imprisonment illo, bonis & catall' ac terris & tenementis suis prædict' ac etiam pro estrepamento terrarum & tenementorum prædict' recipere, ipsum a prisona, qua sic detinetur facer' liberar': Nos statui ejus compatiens in hac parte,*  
ac

(a) See 40 Aff. 23. 2 H. 4. 2. Attaint on a Redisseisin; and it seems if the false Oath be found, it shall not impeach the Record, nor shall he be restored to the Possession, but only be discharged of the

Damages and the Fine; yet perhaps if the Party has Title by subsequent Feoffment from him who recovered, he shall be restored to the Possession.



ac volentes eidem W. gratiam facere special', Vobis mandamus, quod visis record' & processu prædict' & habita consideratione ad valorem bonorum & catall' terrarum & tenementorum prædict' ac estrepament' eorund' rationabilem finem de eodem W. pro eo quod ad nos pertinet in hac parte recipiatis, & ipsum W. a prisona, qua præmissa occasione detinetur deliberari, & ei bona & catall' terr' & tenement' sua in manu nostra existentia sic liberari faciatis per finem supradict'. Teste, &c.

And thereupon the Party shall be fined, as the Justices of the King's 43 E. 3. 26. Bench will assess in their Discretion; and upon that they shall grant a See the Stat. Writ to deliver his Goods and his Lands, and for to deliver him out of 3 H. 8. c. 15. Prison; and the Writ shall be such:

Rex Vic, &c. Cum W. de M. unus jurator' in quadam inquisitione capta apud W. coram W. de B. & sociis suis Justic' Dom' Regis, &c. (ut supra, usque ibi) Justic' nostris de banco per breve nostrum de falso sacramento per ipsum W. fact' per jurat' 24 Milit' convict' fuisset, & ea occasione prisonæ nostr' adjudicat', bona & catalla, necnon terr' & tenementa sua in manu nostra seisit' sunt, nobis constat per inspectionem record' & process. præd' quæ coram nobis venire fecimus, Ac idem W. postmodum venisset in Curia nostra coram nobis, & finem fecit nobiscum pro imprisonment prædicto, & terris & tenementis suis habendis: Tibi præcipimus, quod omnia terras & tenementa W. si ea occasione & non alia in manu nostra existent' eidem W. sine dilatione rehabere fac' & de corpore ipsius W. capiend' occasione præd' omnino supersedeas. Proviso tamen quod de valore terrarum & tenementorum prædictorum a tempore judicii super veredicto jurat' prædict' redditus usque ad datum istius brevis, & etiam de estrepamento eorundem cum inde inquisit' fuerit, nobis respondeas. Teste W. Thorpe, &c. Anno 6 Rotul. 104.

A And there are divers other Manner of Forms of Writs of Attaint, which are not here mentioned, because a Man may see them in the Register.

## Writ of Oyer and Terminer.

**T**HE Writ of Oyer and Terminer should not be properly called a Writ; but it is a Commission directed unto certain Persons, when a great Assembly, Insurrection, or a (a) heinous Misdemeanor or Trespas is committed and done in any Place. Then the Manner and Usage is to make such a Commission of Oyer and Terminer, to hear and determine such Misbehaviour; and the Statute made 2 E. 3. c. 2. requireth, that no Commission of Oyer and Terminer be granted but before the Justices of one Bench or other, or the Justices Itinerants, and that for horrible Trespas; and it is of the King's special Grace, according unto the Form of the Statute thereof made in the Time of the Grandfather of the said King Edward; and the Form of the Commission is such:

Rex

(a) And therefore a *Supersedeas* may be hereto, *quia non enormis transgressio*. 12 Aff. 21.

Rex dilect' & fidel' suis A. B. & C. salut'. Ex gravi querela D. accu- C  
pimus, quod E. F. & G. ac quidam alii malefactores & (a) pacis nostræ per-  
turbatores in ipsum D. apud N. vi & armis insultum fecerunt, & ipsum ver-  
beraverunt, &c. ita quod de vita ejus desperabatur, & alia enormia ei intul-  
erunt, ad grave damnum ipsius D. & contra pacem nostram. Et quia trans-  
gression' si aliter perpetrata fuerit relinquere nolumus impunitam, Assignamus  
vos & duos vestrum Justic' nostros ad inquirend' per sacramentum proborum &  
legalium hominum de Com' Lincoln' per quos rei veritas melius sciri poterit,  
de nominibus malefact' præd' qui una cum præf. E. F. & G. transgress. illam  
perpetrar' & de transgres. præd' plenius veritatem, & ad eandem transgress.  
audiendum & terminandum secundum legem & cons. regni nostri. Et ideo  
vobis mandamus quod ad certos dies & loca, quod vos vel duo vestrum ad hoc  
proverideritis, inquisitionem illam faciatis, & transgress. illam audiat' & ter-  
minetis in forma præd' fact' quod ad justitiam pertinet secundum legem &  
cons. regni nostri: Salvis nobis amerciament' & aliis ad nos inde spectant'.  
Mandamus enim vic' nostro Com' præd' quod ad certos dies & loca, quos vos  
vel duo vestrum ei sciri fac' (b) venire fac' coram vobis, vel duob' ve-  
strum, tot & tales probos & legales homines de ball' tua, per quos rei veritas  
in præmissis melius sciri poterit & inquire. In cujus rei testimonium, &c.

[III.]

And the Rule in the Register is, That if this Clause, *Ac quid' alii malefactor', &c.* be not put into the Commission aforesaid, then in the End shall be this Clause, *Per quos rei veritas melius sciri poterit, de transgress. præd' plenius veritatem ad eandem transgressionem, &c.*

And the Form of the Writ which shall be directed unto the Sheriff upon A  
that Commission, is such:

Rex Vic', &c. Ex gravi querela D. &c. (ut supra, usque ibi) assigna-  
vimus dilect', &c. A. B. & C. & duos eorum Justic' nostr' ad inquirendum  
per sacramentum proborum & legal' hominum, &c. (usque ibi) audiendum &  
terminandum secundum legem & cons. regni nostri. Et ideo tibi præcip' quod  
ad certos dies & loca, quos iidem A. B. & C. tibi scire fac' venire facias  
coram eis vel duobus eorum, tot & tales probos & legal' homines de balliva  
tua, per quos rei veritas in præmis. melius sciri poterit & inquire, & habeas  
ibi hoc breve, &c.

And the King may make a Writ of Association unto the Justices of B  
Oyer and Terminer, to admit them into their Company whom the King  
hath associated unto them; and the Form is such:

Rex dilectis A. B. & C. Sciatis quod cum nuper ad querimoniam D. nobis  
suggerent' quod E. F. & G. & quidam alii malefact' & pacis nostr' perturbato-  
res, &c. (usque, &c.) impunitam; Assignamus vos & duos vestrum Justic'  
nostros, &c. (usque) ad audiendum & terminandum, secundum legem & cons.  
Assignavimus vobis vel duobus vestrum faciendum. Ita tamen quod si ad cert'  
dies & loca, quos vos vel duo vestrum ad hoc proverideritis, ipsum H. adesse  
contigerit, tunc ipsum ad hoc in socium admittat' in forma præd'. Manda-  
mus

(a) See an Oyer and Terminer for a Ward ravished, and Goods taken, and the Defendant found guilty, and thereupon a Scire facias issued. 29 E. 3. 37. See the like Writ, but quere of quidam alii male-

factores, &c. because not indicted. 26 Aff. 7.

(b) And note; If they award a Venire facias, without shewing (before) that it is returned, it is well. 29 E. 3. 30. but a Venire facias ought to be awarded. 26 Aff. 7.



*mus enim eidem H. quod una vobiscum, vel duobus vestrum, ad hoc intendat, sicut præd' est, Teste, &c.*

And the Form of the Writ of Association, which shall be directed unto him who shall be associated unto the Commissioners, is such:

*Rex dilecto & fideli suo H. salutem. Sciatis quod cum nuper ad querimoniam D. nobis suggerentis, quod E. F. & G. ac quidam alii malefactores, &c. assignavimus dilect', &c. A. B. & C. & duos eorum Justic' nostros, ad inquirendum, &c. (ut in patent', usque ibi) terminandum secundum legem, &c. Associavimus vos præf. A. B. & C. & duobus eorum ad præmiss. una cum eis vel duobus eorum faciendum; ita tamen quod si ad certos dies & loca quos iidem A. B. & C. vel duo eorum ad hoc providerint, vos adesse contiger' tunc vos ad hoc in socium admittant, alioquin A. B. & C. vel duo eorum (non expectata præsentia vestr') ad præmiss. faciendum procedant. Et ideo vobis mandamus quod ad præmiss. una cum præf. A. B. & C. vel duobus vestrum intendatis in forma præd' factur', &c. salvis nobis, &c. Mandamus enim eisdem A. B. & C. quod vos ad hoc in socium admittant, sicut præd' est.*

C And then the King may send another Writ unto the said Justices of Oyer and Terminer to proceed, although that all the Justices do not come at the Day of the Sessions. And this Writ is called a Writ of *Si non omnes*, &c. and shall be directed as well unto that Justice as shall be so associate, as unto the other Justices of Oyer and Terminer, and shall be such:

*Rex dilect' A. B. & C. & H. salutem. Cum nuper ad querimoniam D. nobis suggerentis, quod E. F. & G. ac quidam alii malefact', &c. (usque ibi) contra pacem nostr', assignaver' vos præf. A. B. & C. & duos vestr' Justic' nostros, &c. (usque ibi) audiend' & terminand' secund' leg' & consuetud' regni nostri, & postmod' associaver' vobis præf. A. B. & C. & duobus vestr' præf. H. ad præmiss. faciendum: Vobis mandamus quod si vos omnes præmiss. faciend' commodè interesse non possitis, tunc vos tres vel duo vestr' quos præsent' esse contiger' ad præmiss. fac' secund' legem, &c. procedatis. Teste, &c.*

D And if the King made Commissioners of Oyer and Terminer A. B. and C. and afterwards by another Writ doth associate unto them J. of H. who is admitted, &c. and afterwards J. of H. dieth; the King may make a new Association of other Persons to the first Justices; so that Association shall be made and granted after Association; and he may make Association of two or three Persons unto the first Commissioners, or to those of them who are living, to continue the Proceedings, and to proceed to hear and determine the whole Matter, and that they do admit those he doth associate, or two or any of them to proceed upon the whole Matter; and such Writ is in the Register; and by that it appeareth, that by the Death of any of the Commissioners, the Matter shall not be discontinued; and the Writ of Association shall be Patent, Post. 113. C. and the Writ directed to the Justices of Oyer and Terminer to admit the others in their Society shall be close.

E And if a Trespass be done unto one in the Confines of two Counties, then the Party may sue a Commission of Oyer and Terminer directed to certain Persons, to hear and determine the Matter; and the Form shall be such:

*Rex dilectis, &c. Ex gravi querela D. accepimus, quod G. bona & catall' ipsius D. ad valenc' centum librarum apud M. R. & N. quæ sunt in confinio Com' Norff. & Suff. invent' vi & armis cepit & asportavit, &c. (usque ibi) Justic' nostri ad inquirendum per sacramentum proborum & legalium hominum de Com' præd' per quos, &c. Mandamus enim Vicecom' nostris Com' præd' quod ad certos dies & loca, in confinio Com' præd' quos, &c. coram eis in confinio eorund' Com' tot & tales probos & legales homines, &c.*

[112.] And the Writs directed unto the Sheriffs of two Counties shall be A Close.

And a Commission of Oyer and Terminer was granted upon a Rescous made upon the King's Bailiff, where he distrained for Debts or Amercements to the King, and Rescous was made upon him.

And the King may grant certain Commissions *de Oyer & Terminer* of B divers Trespasses done by any Person at the Suggestion of divers Persons, without nominating any in the Commission, and then the Form of the Commission beginneth in this Manner :

*Rex dilectis, &c. Ex clamoribus verimonitiis diversorum hominum de Com' N. ad nostrum sæpius pervenienti' audit' quod A. Episcopus Wint', &c. plur' & diversas oppress. &c. And he shall have the like Writ unto the Sheriff to return the Panel.*

And if a Man have Goods and Merchandise in any Ship upon the C Seas, which Ship is broken by Tempest, and the Goods cast upon the Lands, these are no Wrecks, because certain Persons came alive to the Land, and the Merchandises, or Goods, are taken by Malefactors unknown, &c. The Party may have a Commission of Oyer and Terminer, directed unto certain Persons, to enquire of those who did the Trespasses, and to hear and determine the same, and to make Restitution unto the Party, and a Writ unto the Sheriff to return *probos & legales homines, &c.* before the said Justices, &c.

And a Man may have Commission of Oyer and Terminer, to enquire D of Extortions, Oppressions, and other Misdemeanors of Under-Sheriffs, Escheators, Bailiffs, Clerks of the Market, and all other Officers, upon the Complaint and Suit of any one that will sue, and a Writ unto the Sheriff to return a Jury before the said Justices.

And also the King may direct his Writ unto the Sheriff, or unto E Mayors or Bailiffs, to do as much as in them lieth and appertaineth to them, to remove such Persons from their Office, against whom it is supposed that any one will complain; or that he doth not put such or such into any Office, until Inquiry be made of their Carriage and Behaviour, &c.

And if a Man sueth a Commission of Oyer and Terminer against divers F Persons for taking of his Goods and Chattels, and when they have taken them, they waste, spend or eloin them; then the Party who sued out the Commission shall have a Writ unto the Sheriff, reciting the Matter, commanding him to stay the Goods, and to put them into safe Custody, until it be otherwise provided and adjudged by the Justices of Oyer and Terminer, or by other Justices to be after assigned. And upon that Commission of Oyer and Terminer, if it be found for the Plaintiff,



tiff, the Justices may return the Goods to the Party, and give him Damages, and therefore it varieth from the Action of Trespas sued before the Justices of the King's Bench, or the Common Pleas.

G And in the Time of the Vacation of a Bishoprick, if any Person hunt in the Parks and Chases of the Bishop, the King may send his Commission of Oyer and Terminer to certain Persons, to hear and determine, and enquire thereof; and the Writ shall be such:

*Rex dilect', &c. Sciatis quod assignavimus vos & duos vestr' Justic' nostros ad inquirendum, &c. de Com', &c. per quos, &c. qui malefactores & pacis nostræ perturbatores parcos de S. H. & A. in Com' prædict' postquam ipsi ad manus nostras ratione instantis vacationis Episcopatus Cicestr' devener', vi & armis freger', & in eis sine licentia & voluntate nostris fugaver', & feras ceper' & asportaver', & alia enormia nobis ibidem intuler' in nostri dispendium & contemptum, ac contra pacem nostram, & de transgression' præd' plenius veritat', & ad transgressiones illas audiendum & terminandum, secundum legem, &c. Et ideo vobis mandamus, quod ad certos dies, &c. inquisic' illam fac' & transgressionem, &c. terminetis in forma prædicta, factur', &c. Mandamus, &c. & inquire, &c. Teste, &c.*

H And if in the Time of the Vacancy of the Archbishoprick, any Person doth hunt in the Parks, or cut down the Woods, or fish in the Piscaries of the Bishop, &c. when the Archbishop is created, the King may send and grant the Commission of Oyer and Terminer, to enquire and determine the Trespas in the Time of the Vacancy; and the Form of the Commission shall be,

*Rex dilect', &c. Ex gravi querela venerabilis Pastoris W. Ebor' Archiepiscopi accepimus, quod quidam malefactor', &c. parcos, &c. (and recite in the Commission all the Trespas especially) & alia enormia, &c. in nostri contemptum manifestum, & deterior' Archiepiscopatus prædict', & dicti Archiepiscopi grave damnum, & contra pacem nostram. Et quia contempt' & transgression', &c. impunitos, &c. assignavimus vos, &c. (usque ibi) ad contemptum & transgressionem illas, tam ad sectam nostram quam præf. Archiepiscop' audiendum, &c. terminandum secund' legem, &c. Et ideo vobis, &c.*

But it is to see how it standeth with the Statute of Marlebridge, cap. 8. that the Bishop shall have an Action and punish a Trespas done in the Vacancy of the Bishoprick: But it seemeth it shall be so by these Words in the Statute, *Quod si rapinæ aliquæ factæ sunt Abbatibus vel aliis Prælati Ecclesiasticis, &c.* And in the End of the Statute are these Words, *Si autem in terris & tenementis hujusmodi religiosor' de quibus eorum Prælati obier' sefisti, ut de jure Ecclesiæ suæ, aliqui se intrudent tempore vacationis, &c.* And it seemeth these Words *hujusmodi religiosorum*, shall extend to Bishops: As much as to say, the Bishop shall punish a Trespas done in Time of Vacation of the Bishoprick, in cutting down of Trees, &c. for of Right the King cannot cut such Trees; but for hunting in the Parks, or fishing in the Piscaries, it seemeth the King ought to have the Action for the Trespas done in the Time of the Vacancy; but if they do destroy all the Fish within the Fish-pools, or kill up all the Deer in the Parks in the Time of the Vacancy, it seemeth reasonable,

that by the Statute of *Marlebridge*, the Successor have an Action for such Trespas: *Quere* of this Matter.

And it is intended, That the King of Right ought to keep and defend his Kingdom as well against the Sea, as against Enemies, that it be not drowned or wasted, and to provide Remedy for the same: And also to provide that his Subjects pass by all Ways through the Kingdom with Safety; and therefore if the Sea Walls be broken, or the Sewers or Gutters not scowred, so as the fresh Waters cannot have their Courses, the King ought to grant a Commission to enquire thereof, and to hear and determine the Defaults; and the Form of the Commission is such:

*Rex dilectus, A. B. & C. &c. Cum wall' fossata, guttura, suerae, pontes, calceta, gurgites & trenchie in partibus Holland' inter crucem de W. & pontem de E. per impetum maris, & refluxus, ac inundationem aquarum dulcium per diversa loca in partib' præd' adeo diruta sunt & confracta, quod quamplurima damna & inestimabilia pro defectu reparationis earundem Wallarum, fossatorum gutturarum, suerarum, pontium, calcetor' & gurgitum, & obstructione trenchiarum præd' temporibus retroactis evenirent ibidem, majoraq; processu temporis evenire timent, nisi super hoc celerius remedium adhibeatur opportunum; Nos pro eo quod ratione dignitatis nostræ regiae, ad providendum salvation' regn' nostr' circumquaque sumus astricti, Volentes in hac parte congruum & festinum remedium adhiberi, assignavimus vos, &c. ad supervidendum wall' fossata, guttura, sueras, pontes, calceta, gurgites & trencheas præd', & ad inquirendum per sacramentum tam Militum quam aliorum proborum & legalium hominum de partibus præd' tam infra libertates quam extra; per quos, &c. poterit, per quorum defectum hujusmodi damna contigerint ibidem, & quæ terras & tenementa tenent, seu communiam pastur' aut piscar' in partibus illis, vel etiam defensionem, commodum, & salvationem habent, vel qualitercunque per wall' fossata, guttura, sueras, pontes, calceta, gurgites præd' habere poter', sed etiam damna per trencheas prædict' sustinent vel sustinere poter', & ad omnes illos pro quantitate terrarum & tenementorum suorum, sive per numerum acrarum, sive per carucatas pro rata portionum tenur' suæ, seu pro quantitate commun' pastur' vel piscariæ suæ ibidem distringendum, & per amerciamenta & alio modo, prout melius videritis faciendum, puniendum una cum balliv' libertat' & aliorum de partib' illis ad hujusmodi wallia, fossata, guttura, sueras, pontes, calceta, & gurgit' in locis necessar' reparand', & quotiescunque, & ubi necesse fuerit de novo faciend' ac trencheas præd' in locis necessariis obsiruend', ita quod aliquibus tenent' terrar' seu tenement' hujusmodi, seu communiam pasturæ, seu piscariæ habentibus, divit' vel pauper' aut alt' cujuscunque fuerint conditionis, status, aut dignitatis qui defensionem habere poterint qualitercunque per prædictam walliam, fossatum, guttura, sueras, pontes, calceta, & gurgites, seu etiam damnum per trencheas præd' sustinent' vel poterint sustinere, sive fuerit infra libertates vel extra, non procedant in hac parte: Et ideo vobis mandamus, quod ad certos dies & loca quos vos, &c. ad hoc provideritis præd' wall', fossata, guttura, sueras, pontes, calceta, gurgites, & trencheas supervideatis, & præmissa omnia & singula faciatis & expleatis in forma prædict', & omnia quæ per vos ordinari & fieri contigerit in hac parte, tam infra libertatem quam*  
extra,



*extra, faciatis firmiter observari. Mandamus enim vic' nostro Linc', &c. quod venire faciat, &c. tot & tales tam milites quam alios probos, &c. tam infra libertates quam extra, per quos rei veritas melius sciri poterit, &c.*

A And upon this Commission, a Writ shall issue to the Sheriff, rehear- Ant. 111. D.  
sing the whole Matter in the Commission, commanding him to return a Jury, &c. as appeareth by the Commission. And if the Justices shall sit by Virtue of that Commission, and take divers Presentments and Indictments, and award Process upon them returnable at a certain Day, and afterwards all the Justices or some of them die, the King may grant a new Commission to the Justices which are living only, or unto others, rehearsing the Death of him who is dead, or of those who are dead; commanding them to continue the Proceedings begun, and to proceed upon that Process, and to hear and determine all those Defaults and Offences in the said Commission, the King reciting, that he hath sent unto the Executors, or those who died, to send all the Rolls, Records, and Process before the new Commissioners. And upon that Commission, the King shall send a Writ unto the Executors of the Justices who are dead, to send the Rolls, Records and Process as aforesaid, forthwith under their Seals; and another Writ unto the Sheriff to make a Panel, and to return the same before the new Commissioners, and upon that Commission the Justices shall make a Precept unto the Sheriff, that at a certain Day and Place he return before them the Panel according to their Commission, and that he be there before at the same Day with the Precept. And this new Commission shall be made as well to continue the Suits and Process betwixt Party and Party, sued before the Justices of Oyer and Terminer, as well as the Indictments and Presentments made and found for the King. And the King may put into the Commission a Command unto the said Commissioners, to receive the Records and the Rolls, and Process of the said Executors. But see the Statute of Sewers, and especially the Statute of King Henry the Eighth for that Matter.

[114.]

B (a) And if any *English* Merchant's Goods be spoiled, and his Goods taken beyond the Seas by Merchants Strangers, and the *English* Merchant was beyond Sea to have Justice and Restitution made thereof, and could not obtain the same, and this Matter is testified unto the King in his Chancery: Now upon this Testimony, if the Merchants Strangers shall come into any Place within the Realm of *England* with their Goods; then the *English* Merchant shall have a Writ out of the Chancery, directed unto the Mayor or Bailiffs, where such Merchants Strangers are with their Goods, to arrest them and their Goods, and to keep them under Arrest, until they have satisfied the Party his Damages, which he hath sustained by Reason of their Mifdoing. And may have divers Writs, directed unto divers Ports or Towns, unto the Mayor or Bailiffs thereof, to arrest such Merchants and their Goods; and to detain them, until they have satisfied the *English* Merchant for the Tres-

L 1 2

pass

(a) See a Commission for Piracy on the Statute of 28 H. 8. cap. 15. to be named by the Admiral or Lord Keeper. Dyer 212. and see the like Commission at Common Law, *De capris a Francis post sufferentiam*. Rot. Pat. 26 E. 1. M. 24. Dorfo.

pass which they have done unto him beyond the Seas. But it seemeth the *English* Merchant shall not have such Writ, for any Debt due to him by Contract from a Merchant Stranger, upon a Contract made beyond the Seas, if the Merchant do come into *England*, or his Goods; *Quære tamen* thereof. And the King shall recite in his Writ, which is directed unto the Mayor or Bailiffs, &c. how he hath sent the like Writ unto the Mayor or Bailiffs of such a Town, and another Writ unto the Mayor or Bailiffs of the other Town, in the like Manner; and this Writ shall be sued to attach all those who did the Trespass, and their Goods unto the Value of the Trespass, which he supposeth he was endamaged.

And if certain Persons ought to account unto a Corporation, as if C the King grant, to the honest Men of the Town of N. a certain Sum, out of Things which come to the same Town to be sold, and there are Collectors to gather the same, who do so; the King may grant a Commission to certain Persons, to enquire what Persons have received such Sums, and to hear and determine the Matter, and to hear their Accounts thereupon, and do in that Case as Auditors shall do; and he shall send a Writ unto the Sheriff to return a Jury before the same Justices at the Day, &c. which they appoint, &c. to enquire thereof, and the Commission is in the End of the Writ, *Ex parte talis*, and before the Writs of Debt, in the Register.

18 E. 4. 1.  
Conspiracy  
against two,  
one dieth,  
pendant the  
Writ; *per Curiam*,  
the Writ shall  
not abate.

and note by *Finchden* 43 E. 3. 32. that one shall answer if he appear.

### Writ of Conspiracy.

Vi. Statute  
33 E. 1. *de*  
*Conspirationi-*  
*bus*.  
Vi. after E.  
F.G. Conspi-  
racy shall be  
against one,  
& econtr.

A Writ of (a) Conspiracy lieth where two, three, or more Persons of D Malice and Covin do conspire and devise to indict any (b) Person falsly, and afterwards he who is so indicted is acquitted; now he shall have this Writ of Conspiracy against them who so indicted him. But this Writ lieth against two Persons at the least who do so conspire; for if one Person of Malice and false Imagination do labour and cause another falsly to be indicted, the Party who is so indicted, shall not have a Writ

Note; if the Action be brought against divers, and all but one are acquit, the Action faileth. 28 Aff. 12. so if all but one are discharged by Matter in Law.

(a) One may be indicted of a Conspiracy at the Suit of the King, and then he shall have a villainous Judgment. 24 E. 3. 34, 75. 43 E. 3. 33. But at the Suit of the Party he shall be only taken. 27 Aff. 59. Judgment on Indictment of Conspiracy as in Attaint. 4 H. 5. Judgment 220. See the Form of the Judgment, where the Party

was convicted, &c. on Indictment. 46 Aff. 11.

(b) Note; If he be acquitted by Matter in Law, but not of the Fact, &c. as for that he did it *se defendendo*; or that he did it by Pretext of an Arrest for Felony, and he resisted, and thereupon he killed him; in this Case no Conspiracy lies, because no Malice. 22 Aff. 77.



Writ of Conspiracy, &c. but an Action upon the Case against him who so caused him falsely to be indicted.

E If two Men conspire to indict another, and afterwards he is indicted, for which he bringeth Appeal upon the same Indictment, and after is Nonsuit upon his Appeal after Declaration or before Declaration, the Party who was falsely indicted shall have a Writ of Conspiracy, because he is arraigned after the Declaration upon the Appeal, and is acquitted, and before the Declaration upon Nonsuit he shall be arraigned upon the Indictment, and if he be acquit, he shall have a Writ of Conspiracy, &c. But if he be falsely indicted, and after an Appeal is sued upon that Indictment, and he put no Answer unto the Appeal, and afterwards is acquitted by Verdict upon the Appeal, he shall not have a Writ of Conspiracy in that Case, because he is acquit upon the Appeal, and not upon the Indictment, &c. But upon Nonsuit in the Appeal a Conspiracy doth lie for the Cause before mentioned.

34 H. 6. 9. per *Prisot.* Note; this Case proves that Conspiracy lieth as well upon Appeal as Indictment for he is arraigned upon

the Appeal, *Stamford* 172. that is, indicted at the Suit of the King. 19 E. Fitz. *Conspir.* 12. 5 E. 3. *ibid.* 22.

F (a) And if two conspire to cause a Man to sue an Appeal against another of Felony or Murder, without any Indictment taken or found thereof, and after the Defendant is acquitted by Verdict, he shall not have a Writ of Conspiracy against those who conspire to appeal him, because that by the Statute of *West. 2. c. 12. Quia multi per malitiam*, it shall be enquired of Abettors, if he be not indicted thereof; and if they be found, he shall have a *Scire facias* against them, out of the same Court where he is acquitted, to answer him his Damages. And so if he get a (b) Nonsuit in any such Appeal, where there is not any Indictment, the Defendant shall have a Writ of Conspiracy after the Nonsuit or after the Acquittal: But the Form of the Writ of Conspiracy where he is acquit by Verdict, doth vary in Words in the End from the Writ of Conspiracy which is founded upon the Plaintiff's Nonsuit in Appeal; for one Writ founded upon the Verdict is, *Quousque secundum legem, &c. acquietatus fuisset*; and the other Writ of Conspiracy founded upon the Plaintiff's Nonsuit is, *Quousque idem querens per considerationem Cur' nostr' inde quietus recessit*. The Form of which Writ follows:

5 E. 3. Conspiracy 22. 13 E. 3. Conspiracy 25. the Abettors shall not be enquired of but where the Abettment is found by Enquest. 19 H. 6. 19. & 4 H. 6. 23. nul tiel record; is a good Reply in Conspiracy.

[115.]

*Rex Vic', &c. Si A. fecerit, &c. tunc pone, &c. B. & C. quod sint coram nobis, &c. Ostens. (c) quare conspir' inter eos apud N. præhabita præf. A. de quodam jumento furtive apud N. capto & abducto indictari, & ipsum ea occasione capi, & in prisona nostra Warr' quousque in Cur' nostr' coram dilectis & fidel' nostr' R. & S. Justic' nostris ad Gaol' nostram Warr' deliberand' assign'*

22 Aff. 77.

(a) Nor shall one have Conspiracy, if he be indicted or appealed, and arraigned and acquitted on the Appeal. 33 H. 6. 2. yet note; a Monk was appealed of Robbery and acquitted; he and his Abbot shall have a Writ of Conspiracy, tho' he was acquitted by Verdict, &c. 24 E. 3. 73. *Ratio*, for that the Abbot, though not Party,

shall have a *Scire facias*, for the Default of the Party on the Original.

(b) See 13 E. 3. *Conspiracy* 25. 17 E. 2. *ibid.* 26. *Ratio*, because the Writ is given on a Nonsuit in Appeal, and for that there is an Enquiry of the Abettors.

(c) *Conspiraverunt, & consideraverunt.* 19 R. 2. Brief 926.

*assign' secundum legem & consuetud' regni nostri acquietatus fuisset, detineri falso & malitiose procuraver' ad grave damnu' ipsius A. & contra firm' ordinat' in hujusmodi casu provis'. Et habeas ibi nomina ping' & hoc Breve. Teste, &c.*

The other Writ founded upon Nonsuit in Appeal is such :

*Rex Vic', &c. Si A. fecerit, &c. tunc pone, &c. B. & C. quod sint coram nobis, &c. Ostens. quare conspir' inter eos apud N. prehabita p'raf. A. de mort' D. apud E. nuper interfecit' appellari, & ipsum A. ea occasione capi & in priso'na nostra de L. quousque in Cur' nostra coram nobis idem A. &c. per consider' Curia' nostra' inde quietus recessit, &c.*

And if a Man cause one as Principal to be appealed of Felony or A Murder, and another as Accessary to him, and afterwards is Nonsuit in his Appeal, the Accessary shall have a Writ of Conspiracy as well as the Principal.

33 H. 6. 1.  
34 H. 6. 9.  
cont. if the  
Principal die  
before he be  
attainted.

And if the Principal, and one who is Accessary, be indicted of Felony, and be taken and arrested, and the Principal is indicted and acquitted, now by that the Accessary is discharged, and the Accessary thereupon shall have a Writ of Conspiracy against those who conspired to indict him, and the Writ in the End shall say, *Quousque idem* (the Principal) *secund' leg', &c. acquietat' fuisset, & idem* (the Accessary) *quietus recessit.*

(a) And a Man shall have a Writ of Conspiracy upon an Indictment B before any Mayor, Bailiff of any City or Borough, who have Gaol-delivery within the City or Borough, if he be acquitted before them, &c. for that Acquittal dischargeth him of the Felony. But a Writ of C (b) Conspiracy doth not lie against the Indictors, &c.

20 H. 6. 5.

7 H. 4. 31.  
8 H. 4. 6.  
21 E. 3. 19.  
47 E. 3. 17.  
27 H. 8. 2.  
20 H. 6. 5.  
& 33.  
35 H. 6. 14.  
& 19.  
14 H. 6.  
Conspiracy.

If Jurors be sworn to enquire, &c. and afterwards any of them is D discharged by the Justices, he shall not be punished for what he did when he was sworn : But if he do conspire after, he may be charged for the same in a Writ of Conspiracy. (c)

And he who cometh into Court, and discovereth Felonies, and is sworn to give Evidence to the Jury, is not chargeable in Conspiracy. (d)

In a Conspiracy against two, one pleaded to the Writ, and the E other (e) Matter in Law, which is adjudged for him, and the Plea unto the Writ found by Verdict against him who pleaded unto the Writ ; the Plaintiff shall have Judgment against him who pleaded to the Writ : But if both had pleaded Not guilty, and (f) one had been found guilty, and the other not, there the Plaintiff shall not recover, for then he

(a) See 27 H. 8. 2. 12 E. 4. 17. 7 H. 4. 1. 21 E. 3. 47. 21 E. 4. 1. 8 H. 4.

(b) *Quere*, If the Jurors in such Case shall be punished, if they conspire before the Indictment. 47 E. 3. 16. 12 E. 4. 67. that they shall not, 27 Aff. 12.

*Quere*, If the Jurors procure themselves to be impanel'd. 9 H. 4. fol. ult.

(c) See 20 H. 6. 33. *Stamf.* 73. 20 H. 6. 34. N. B. 57 *contr'*.

(d) See 27 Aff. 12. 27 H. 8. 2. 37 Aff. 12. 35 H. 8. 15.

(e) See 14 H. 6. 15. accordant, for it may be a Conspiracy.

(f) See accordant 33 H. 6. 1. 8 E. 3. 17. 8 H. 6. 1. 28 Aff. 12. 11 H. 4. 2. but if one be found guilty, and the other makes Default, 24 E. 3. 73. or be dead, 18 E. 4. 1. there he shall have Judgment against the one, tho' he had pleaded to the other. 22 R. 2. Brief 888.



**F** he did not conspire as is supposed by the Writ. But it may be that they did conspire in the Case aforesaid, although that the Matter in Law be adjudged for the Defendant. And if the Principal die before any Verdict given upon the Acquittal, or have a Pardon and plead it, then the Accessary shall not have a Writ of Conspiracy, because he is discharged by the Death of the Principal, or by the Pardon to the Principal.

Conspiracy against two, one is attaint, the other makes Default, Judgment

shall be against him. 24 E. 3. 34. but *quare* by *Stamford* 174. for 27 E. 3. it is holden, that one shall not answer without the other.

**G** If a Man be falsely indicted of Felony, and afterwards by Act of Parliament a general Pardon is granted of all Felonies, the Party now (a) shall not have a Writ of Conspiracy, although he will plead unto the Indictment and is acquitted, and will not plead the Act, &c. because his Life was not in Danger, and the Felony was discharged by the Act.

**H** The Justices of Gaol-delivery arraign a Prisoner for Murder within the Year, where an Appeal is depending against the same Prisoner, for the same Murder, which they know, (b) and yet they proceed and acquit him, he shall have a Conspiracy, although he was not acquitted nor discharged of the Appeal: See the Statute of *An. 3 H. 7. cap. 1.* And before that Statute it was holden, 21 H. 6. by *Passon* and *Newton*, that he shall have a Conspiracy; for they said that he should be hanged if he had been found guilty upon the Arraignment on the Indictment. And so the Statute *de Conspiratoribus, temp. E. 1.* which Statute doth not determine in what Cases a Conspiracy shall lie. But by the Statute of 4 E. 3. *cap. 10.* which giveth the Justices of *Nisi prius* and of Assise, Power to hear and determine of Conspiracies, Confederacies and Champerties, which they cannot determine in short Time, they adjourn them *in Banco*, and shall be there determined.

21 H. 6. 28, 29. 17 Ass. 1. Br. Appeal 55. Rastal *Nisi prius* 5. and note that before that Statute, they cannot arraign them at the King's Suit.

And if a Man be indicted or appealed of Treason or Felony, or a Trespas done in a foreign County, &c. if he be acquit thereof, he shall have a Conspiracy against him who procured him to be indicted or appealed, and shall recover treble Damages by the Writ upon the Statute of 8 H. 6. *c. 80.*

And if a Man be indicted of Felony or Treason, where there is not any such Place within the County, he shall have Conspiracy, and recover his Damages against the Abettors and Procurers or Conspirators, by the Statute of 18 H. 6. *cap. 12.*

And the Form of the Writ for the Accessary in a Writ of Conspiracy is,

*Quare*

(a) See accordingly by *Markham*, if the Indictment was abateable. 19 H. 6. 29. 9 E. 4. 12. 21 H. 6. 29.

(b) It seems sufficient if the Writ be delivered to the Sheriff, who opens it and reads it to the Justices; but if they have no Notice, it is clearly no Plea: And see there, if the Son of one outlawed, or his

Wife brings an Appeal of the Death of his Father, and the Party is acquitted, he shall be after arraigned at the King's Suit; otherwise by *Newton*, if the younger Son brings an Appeal. But in both Cases he shall be again arraigned at the Party's Suit. 21 H. 6. 28, 29.

[116.]

*Quare conspiracy, &c. præf. A. de eo quod ipse abettasse & procurasse debuisse D. quæ fuit uxor E. F. & G. de morte ipsius E. quondam viri sui appellari coram J. & sociis suis nuper Justiciar' nostris ad appellum illud audiend' & terminand' indict', & ipsum ea occasione capi & imprisonari, & in prisoa nostra Linc' quousque coram præf. Justic' nostris inde, secundum legem & consuetud' regni nostri acquietatus fuisset, &c.*

And there are divers other Writs of Conspiracy grounded upon Dis- A  
ceit, and Trespas done unto the Party, which are properly Actions of  
Trespas upon the Case; as if two Men do conspire to indict another  
Man because he did not arrest a Felon, who passed by the Town of  
N. and because they caused him to be indicted and amerced in the Leet  
of R. and F. and took and imprisoned him for that Amercement until  
he be acquit in the said Leet.

4 Co. 18.

And if Men say and affirm unto A. that he hath Right unto such B  
Land, and procure and cause him to sue an Action for the same against  
B. who is Tenant of that Land, &c. by which he is of Necessity com-  
pelled to sell other Lands or Tenements for the Defence of his Land,  
&c. now he shall have an Action (a) against those who procure or con-  
spire to cause A. to bring his Action, &c.

And if two Men procure or cause one to be indicted for hunting in C  
another's Park, for which he is taken, imprisoned and put to Charges  
until he hath acquitted him of the Trespas, he shall have a Conspiracy  
against them (b).

46 E. 3. 20.

39 E. 2. 13.

Fitz. Con-

spiracy 9.

42 E. 3. 14.

And Conspiracy shall be maintainable against those who conspire to D  
forge false Deeds which are given in Evidence by which his Land is  
lost.

Conspiracy shall be maintainable against those who conspire to bring E  
an Assise in the Name of the Plaintiff against a Defendant, and to make  
one Attorney for the Plaintiff, in which Assise the Plaintiff was found  
Villain, &c. now he may bring this Writ of Conspiracy.

3 Aff. 13.

11 H. 7. 25.

And Conspiracy shall be maintainable, against those who conspire to F  
indict one of Trespas, &c. whereof he is acquitted, &c.

And Conspiracy shall be maintainable, because the Defendant made G  
one to present in the Name of the Plaintiff unto an Advowson, and for  
that presenting unto the Bishop who is admitted and instituted, &c.

40 E. 3. 19.

47 E. 3. 15.

But the Of-

fice ought to

be sufficient.

If one conspire to cause a false Office to be found of my Land, H  
which is found by his Procurement, &c. I shall have a Writ of Con-  
spiracy.

In a Conspiracy against two, one justifies because he was then Justice I  
by Commission, when the Plaintiff was indicted before him, &c. and  
for any Conspiracy before, he pleaded Not guilty.

8 H. 4. 6.

11 H. 7. 26.

And a Writ of Conspiracy for indicting of Felony doth not lie but K  
against two Persons at the least; but a Writ of Conspiracy, for indict-  
ing one of Trespas or other Falsity made, as in the Cases aforesaid,  
lieth against one Person only.

And

(a) See contra 38 E. 3. 3. And that he ought to shew in his Writ who sued the Action.

(b) 7 H. 4. 31. 3 Aff. 6. 11 H. 7. 26.



**L** And a Man shall not have a Writ of Conspiracy for indicting him <sup>38 E. 3. 3.</sup> of Felony, against Husband and Wife, because they are but one Person; but against Husband and Wife and a third Person it well lieth. *Stamf.* 174.

But if the Writ of Conspiracy be brought against two, then it shall be said properly a Writ of Conspiracy. But if it be brought against one Person only, then it is but an Action upon the Case upon the Falsity and Disceit done, because one Person cannot conspire with himself.

**M** And the Writ of Conspiracy may suppose the Conspiracy to be in two <sup>9 H. 6. 30.</sup> several Places, and shall be good; and the Writ ought to be brought in <sup>22 H. 6. 49.</sup> the County where the Conspiracy is made, and not where the Indictment was, or where the Deed was done, &c.

**N** There is also another Writ of Conspiracy which is given upon the Statute called *Articuli super chartas*, 28 E. 1. cap. 10. which Writ shall be directed unto the Justices of Assize to enquire of the Conspiracy; and the Writ shall be such:

*Rex dilectis & fidelibus suis W. de S. & sociis suis, &c. assign' salut'. Cum inter cæter' articulos, quos dominus Edw' quond' Rex Angl' avus nostr' ad amendac' status populi sui concessit, ordinat' sit, quod de Conspiratoribus, falsis informatibus & malis procuratoribus duodenar' inquisitionum, assisarum & juratorum Justic' de utroq; banco, & Justic' ad ass. capiend' assign' cum in patriam venerint ad officium suum faciend' faciant inquisition' ad cujuscunque querelam sine brevi, & sine dilatione, & faciant Justic' conquerenti, prout in articulis præd' plenius continetur: Nos dictos articulos in omnibus inviolabiliter observari volent' vobis mandamus, quod inspecta ordinat' præd' ult' ad prosecution' omn' & singul' coram vobis conquer' volent' faciat' quod secund' formam ordinac' præd' fuerit faciend'. Teste, &c.*

**O** And upon that he shall have an *Alias* and a *Pluries*, and Attachment against the Mayor or Sheriff, &c. if they do not according to the Writ sent unto them, or return the Cause why they cannot do the same; and it seemeth reasonable that the Party in Prison should have an Action upon that Statute against the Recogniser, if he find him not Bread and Water in Prison, &c. according to the Statute.

(a) *Writ of Account.*

9 H. 6. Account 8.

**A** Writ of (b) Account lieth divers Ways; for if a Man make one P his Bailiff of his Manor, &c. he shall have a Writ of Account against him as Bailiff.

6 R. 2. Belk. Account 47.  
14 H. 4. 80.

And if a Man make one his Receiver, to receive his Rents or Debts, &c. he shall have a Writ of Account against him as Receiver.

And if a Man make one his Bailiff, &c. and also his Receiver, then he shall have an Account against him as Bailiff, and also as Receiver.

[117.]

29 H. 6. Fitz. Account 6.  
36 H. 6. 10.  
10 R. 2. Account 45. ac.

(c) A Man shall have a Writ of Account against one as Bailiff or Receiver, where he was not his Bailiff or Receiver; for if a Man receive (d) Money for my Use, I shall have an Account against him as Receiver; or if a Man do deliver Money unto another to deliver over unto me, I shall have an Account against him as my Receiver.

(e) And so if a Man enter into my Land to my Use, and receive the A Profits thereof, I shall have an Account against him as Bailiff.

Vi. 43 E. 2.  
21. Thorpe.

And so if the Father doth occupy the Land of an Infant, which the B Infant hath purchased, or hath by Purchase, the Infant shall have an Account

*Note*; No Damages shall be in Account, because all shall be cast, considered by the Auditors as Arrearages. 7 H. 6. 36. per Martyn. 2 R. 2. Account 45.

(b) *Note* the Writ and Count *a tempore quo fuit Ballivus manerii de S. & habuit administrationem bonorum*, &c. if it be found *quod habuit administrationem bonorum*, altho' he be not *Ballivus manerii*, the Plaintiff shall recover, because there is no other Writ. *Kelw.* 114. So *Ballivus Domus* shall be charged for Goods delivered to him, as Bailiff in Account. 2 R. 2. Account 46. See an Account against a Bailiff of Woods, and of what Things he shall answer. 34 E. 3. *ibid.* 131. See 9 E. 4. 40. 9 E. 3. 37.

(c) If a Man holds certain Lands of me by the Service of being my Bailiff of my Manor, I shall have Account against him, tho' he never took the Profits, because he is my Bailiff by his Tenure; per *Fitzb.* 18 H. 8. 5.

If I deliver a Tun of Wine, or Last of Herrings, &c. to sell, and the Bailiff sell them; I shall not have Account against him for the Money as Receiver, for he had no Allowance of Costs for his Labour; but I may have Account against him as Bailiff. 43 E. 3. 21. 46 E. 3. 9. 4 H. 6. 27.

*Note*; A Bailiff shall have Allowance of

casual Things of common Course, paid or done by him without any Command, as for Relief; but not for other casual Payments, if he has not a special Command, &c.

*Note*; A Bailiff shall not have Account against his Master for a Surplus on Account. 41 E. 3. Account 33. *Quare.*

*Note*; A Receiver of Monies is not compellable to make Adventure, for Doubt of Loss; and therefore if he makes Oath, that he did not find any Thing that he dared to buy for Doubt of Loss, the Plaintiff shall be thereby bound to receive his principal Sum; for if he had Loss, the Master is bound to sustain it. 46 E. 3. Account 40.

(c) Yet if one receive to my Use, Money sealed up in a Bag, as my Servant, Account does not lie against him. 29 E. 3. 20. 20 H. 6. 16. See 6 H. 4. 8. 2 H. 4. 12. 13 H. 4. 1. 41 E. 3. 10, 22. 33 H. 6. 2. 6 E. 3. 12. *E. Bailly* 4.

(e) Account lies against him who receives my Rent without my Appointment. 11 H. 4. 65. per *Thirm.* but not against him who enters into the Lands of one of full Age, or an Infant not Tenant in Socage. 13 E. 3. 35. *Dyer* 277. but in the King's Case he shall be charged as Bailiff, if he has no Title. 33 H. 6. 3. per *Prifot.* 4 H. 7. 6.



Account against him as Bailiff of his Lands; and this Writ of Account may be sued as well in the County as in the Common Pleas.

- C If a Man have Cause to have an Account against one as Bailiff or Receiver, if he die (a) his Executors shall have the Action: But an Account doth not lie against (b) the Executors of a Bailiff or Receiver, for the Receipt or Occupation of their Testator. And the Writ of Account which shall be sued in the County, is a *Justicies* directed unto the Sheriff, which is such (c):

*Rex Vic' Linc' sal'. Præc' tibi, quod Justic' A. quod juste & sine dilacione reddat B. (d) rationabile compotum suum de tempor' quo fuit ball' suus in N. & recept' denar' ipsius B. sicut rationabiliter monstrar' poterit, quod ei redd' debet, ne amplius inde clam' audiamus pro defectu justitiæ. T. &c.*

And for Executors the Writ is,

*Quod redd' B. & C. exec' testamenti D. rationabil' compot' suum de tempor' quo fuit ball' ipsius D. in N. & ipsius defuncti, sicut ration' monstrare poterit.*

- D If two Merchants occupy their Goods and Merchandises in common unto their common Profit, one of them shall have an Action of Account against the other in the County, or in the Common Pleas; and the Writ in the County shall be,

*Rex Vic', &c. Præc' tibi quod Justic' A. mercator' quod juste redd' mercat' rationabil' compot' (e) de tempor' quo fuit recept' denar' ipsius B. ex quacunq; causa & contractu ad communem utilitat' ipsorum A. & B. proven' sicut per legem mercator' rationabiliter monstrar' poterit, quod ei redd' debet.*

And this Clause *Ex quacunq; causa & contractu*, ought to be put in every such Writ, whether it be sued in the Common Pleas or in the County.

- E And the Executor of one Merchant shall have such Writ against the other Merchant, but not against his Executor:

*Rex Vic', &c. Præc' A. quod redd' B. rationabil' compotum de tempore quo fuit receptor denarior' ipsius A. vel ballivus ipsius A. in N. & nisi fecerit, &*

M m 2

*præd'*

a Writ which supposeth that *de tempore quo fuit receptor denariorum*, the Defendant shall not say, that he hath accounted from such Time to such Time, but ought to shew certain for what Things he hath accounted. *Contra* where the Writ is, *a tempore quo fuit Ball.* 3 E. 3. Account 61.

(a) And so of a Successor, &c. 31 E. 3. Account 57, & 124. *contra* of an Heir. 19 E. 3. *ibid.* 56. See 10 H. 7. 10. Stat. W. 2. c. 23. and the Executor of an Executor, 25 E. 3. 5. and to an Administrator. 31 E. 3. 11. See Co. Lit. 89. b.

(b) But if the Bailiff's Executors do account with J. S. of their own Agreement, J. S. shall have Debt on the Arrears or Ballance of such Account. See Account against them as Executors. 2 H. 4. 13.

(c) Account against a Bailiff, shall be brought in the County where he was Bailiff, but against a Receiver it may be in any County. 30 E. 3. 20. See Account *de tempore quo fuit Receptrix vel Balliva* against a Feme. 19 H. 6. 5.

(d) Note; This Writ lies but in Account, and therefore it is a good Plea to say, fully accounted with the Plaintiff himself, or before Auditors, &c. for after such Account made, the Action of Account is gone; but he may have Debt on the Arrears or Balance of the Account. 7 H. 4. 14. 34 H. 6. 43. but it ought to be before Auditors, assigned by him with whom the Account is. 29 E. 3. 40.

(e) See 30 E. 1. 127. accordant. 10 E. 3. 7. 14 E. 3. Account 60. 19 E. 2. Brief 839. or 829. *M. h.* 14 *fa.* 1. *R. t.* 189. in B. R. See also 10 H. 7. 6. 14 E. 3. 11 H. 4. 19. *contr.* 19 E. 2. Brief 893. 19 E. 2.

19 E. 3. Fitz. Account 56. The Writ of Account is given to Executors by Statute, and was not at the Common Law.

Two purchase a Manor for Life, and one taketh upon him to be Bailiff to the other, no Account lieth by 8 E. 2. Account 115. & 21 E. 3. *ibid.* 66. 30 E. 1. Account 127. Note, that in

*præd' A. fecerit te secur' de clamor' suo prosequendo, tunc sum præd' B. quod sit coram Justic' nostris apud Westm' in Quindena Pasc', &c. ostens. quare non fecerit, & hab' ibi sum' & hoc breve, &c.*

4 E. 3. pl. 8.

14 H. 4. Account 124.

4 E. 2. 17.

ibid 97. 31

E. 3. Account 57.

25 E. 3. 45.

in the like

Action the

Defendant said that he was not Receiver of the Predecessor, and admitted good.

20 E. 3. Account 78. Account lies against an Abbot notwithstanding the Receipt was by the Predecessor.

And a Prior or Abbot or Master of an Hospital shall have a Writ of Account against him who was Receiver or Bailiff in the Time of their Predecessor; and the Form of the Writ shall be such:

*Præd' A. quod reddat I. Priorissæ de S. rationabil' computum de tempore, &c. ball' Aliciæ quondam Priorissæ de S. prædecess. præd' I. & recept' denar' ipsius Aliciæ Priorissæ, &c.*

And another Writ thus: *Præcipe A. quod reddat.*

And another Writ thus: *Præd' A. quod redd' communitati vill' de W. rationabil' computum suum de tempore, &c. quo fuit receptor denar' ipsius communitat' in W. Et nisi, &c. Et præd' communitat', &c.*

And note, that the Writ of Account sued in the County, may at the Suit of the Plaintiff be removed into the Common Pleas by a Pone, without any Cause shewed in the Writ, but shall not be removed out of the County by the Defendant, without Cause shewed in the Pone, &c. As if the Defendant plead a foreign Release, then it shall be said in the Pone, *Quia prædict' defend' in placitand' in Cur' nostra in N. in qua loquela pendet per retorn' brevis nostri protulit quoddam scriptum acquietantiæ sub nomine ipsius A. continens in se præf. A. omnes acc' quas ærsus præf. B. def. ratione compoti præd' habuit, eidem B. remisisse in Com' Linc' fact' ut dicitur, quod quidem scriptum præf. A. omnino dedit, propter quod loquela illa in Cur' præd' ulterius deduci non debet, Fiat executio istius brevis, si causa sit vera, & aliter non.*

Vi. 4 E. 2.

Br. 791.

Where it is

holden, if he

hath any

Land, it is

sufficient;

but there he

had in the

Right of his

Wife, but 6s.

8d. and had

not Title to

be Tenant by

the Curtesy,

therefore not

sufficient.

There is another Manner of Writ of Account founded upon the Statute of Marlbridge, cap. 23 And that Writ lieth (a) where a Man ought to make Account as Bailiff or Receiver, and hath no Lands nor Tenements by which he may be distrained, but is vagrant in secret Places, where he will not be found, then the Plaintiff shall have a Writ of Account, which is called *Monstravit* upon the Statute, and the Writ is of this Form:

*Rex Vic', &c. Monstravit nobis Prior de N. quod cum A. extiterit ballivus suus in K. omnium rerum & bonorum suorum cur' habens & administrationem, idem A. compoto suo non soluto subterfugia quærens, latitat in balliva tua, nec possit inveniri & distringi ad reddend' præf. Priori computum suum præd', Et quia de communi concilio regni nostri provisum sit, Quod si ballivi, qui dominiis suis computum suum reddere tenentur, se subtraxerint, & terras vel tenementa non habent per que distringi valeant, per eorum corpora attachientur; Ita quod Vicecom' in quorum ballivis invenient' eos venire fac' ad compot' suum redd'. Tibi præcipimus, quod si præd' Prior fecerit te secur' de clamore suo*

(a) And note, that Lands of which he is seised in Right of his Wife, are not Lands within the Statute, on the Point in Issue, whether he had sufficient Lands. 4 E. 2. Breif 791. in the same County. 6 H. 6. Breif 806.



*suo prosequendo, tunc præd' A. attach' ita quod eum habeas coram Justic', &c. tali die, ad reddend' præf. Priori compotum suum præd' sicut rationabiliter monstrare poterit, quod ei reddere debet, &c. & habeas ibi, &c.*

But this Writ is not now in Use, because that by the Statute of *West.* [118.] 2. cap. 12. made after the Statute of *Marlbridge*, Process of Outlawry is given in a Writ of Account against Bailiffs and Receivers; but yet he may sue a *Monstravit* at this Day if he will: And the Form of the Writ of *Monstravit* directed unto the Sheriffs of *London* is such:

*Rex Vic' Lond' salut'. Monstravit nobis A. quod cum B. extiterit receptor denarior' A. ipsius & ball' suus in N. idem B. compoto suo non solut' in terfugia quærens latitat in Ball' vestra, &c. Et quia, &c. vobis præcipimus, quod si præd' A. fecerit vos secur' de clamor' suo prosequendo, tunc præd' B. attachiatis, ita quod eum habeatis coram Majore civitatis nostr' Lond' & vobis in proxim' Hustingo vestro Lond' ad reddend' præf. A. compotum suum prædict' sicut, &c. Et habeatis, &c.*

And the Receivers and Bailiffs may be put in one Writ in the *Monstravit*, thus: *Receptor denar' ipsius A. & ball' suus in N.* But if the Writ be sued in the Common Pleas, then the Bailiff must be put, *Sicut ball' suus & receptor denarior' ipsius A. in N.*

A (a) And a Writ of Account lieth against Guardian in Socage; but the Form of the Writ doth vary from the Form of the Writ against the Bailiff, &c. and the Form is such:

See that in Account against one as Bailiff and

Receiver, the Defendant said, that he was Guardian in Socage and not Bailiff, and good; per 32 E. 3. Account 60.

*Rex Vic', &c. Si A. fecerit, &c. tunc sum', &c. B. quod sit coram Justic', &c. ostens. quare cum de communi concilio regni nostri provis. sit, quod custodes terrarum & tenementor' (b) quæ tenentur in socagio hæred' terrarum & tenementorum illorum (c) cum ad plen' ætat' pervenerint, reddant rationabil' compotum suum de exitibus de terris & tenementis illis provenientibus de tempore quo custod' illam habuer' ratione minoris ætatis hæred' prædict' idem B. præf. A. rationabil' compotum suum de exitibus provenient' de terris & tenementis suis in N. quæ tenentur in socagio, & quorum custod' idem B. habuit dum præd' A. infra ætat' fuit, reddere cons. ut dic' & ideo, &c.*

13 E. 3. Account 77.

Notwithstanding that he be no Guardian in Droit, if the

Defendant hath the Occupation or Manurance of the Land, the Action lieth, per 32 E. 3. Account 59. Fitz. 27.

(a) And

(a) No *Capias* or *Exigent* lies in Account against a Guardian. 17 E. 3. 50. but if the Defendant comes in by *Capias*, he shall be put to answer, for it is only a Miscontinuance. 29 E. 3. 5.

(b) And therefore it is a good Issue, *quod non tenentur in Socagio.* 13 E. 3. Account 77. 22 E. 4. 5. that they are held

in Chivalry per Defendentem & non in Socagio. 11 H. 6. 7.

(c) And so note; The Occupation charges him, though he be not *Prochein amy*, 29 E. 3. 5. 4 E. 3. 107. accordant. But it seems contra if he held in Chivalry, although the Party has no Colour. 13 E. 3. *ibid.* 77. Co. Lit. 89.

Vi. old N. B. 9. and after 149. B. for Admeasurment of Dow-er by Infant. 16 E. 2. Account 30. 3 & 4 Mar. Dyer 137.

(a) And if a Man during the Minority of the Heir enter into the B Land of the Heir which he hath by Descent, and take the Profits to the Use of the Heir, the Heir at full Age shall have an Account against him as Guardian for the Profits received until he come to the Age of fourteen Years; and for the Profits received after the Heir comes of the Age of fourteen Years, he shall have a Writ of Account against him as Bailiff, and not as Guardian; for he cannot be Guardian longer for Socage Lands but till fourteen Years of Age: But the Heir shall not have an Action of Account against him as Guardian, until the Heir be of the full Age of Twenty-one Years, and that by the Words of the Statute, which are *Qui cum ad ætatem pervenerit, &c.* But he shall have an Action of Account against him as Bailiff during his Nonage, at what Time he will against him who taketh the Profits of the Land which he hath by Discent, be he Guardian in Socage in Right, &c.

6 E. 3. pl. 12. a Case con.

And a Writ appeareth in the Register, that if a Man be found in C Arrearages upon his Account, and the Party Plaintiff (b) do arrest him in London for those Arrearages, then he may sue a Writ in Chancery directed unto the Sheriff, rehearsing the whole Matter, commanding the Sheriff to detain and keep in Prison him who is so arrested, until he hath satisfied and paid the Arrearages. And it seemeth by the same Reason, that if a Man sue an Action of Debt upon Arrearages of Account before Auditors, and hath the Party arrested, that he shall have a Writ out of the Chancery unto the Sheriff, to keep him in Prison until he hath paid those Arrearages; but I conceive this Writ doth not

(a) If one enters and claims the Land as Guardian in Chivalry, where the Land is held in Socage, he shall be only Bailiff to the Infant. 28 Aff. 13. 34 Aff. 10. and the Heir may have Account against him as Guardian in Socage. 10 H. 6. 7. per Cott. 41 E. 3. Account 35. 32 E. 3. Account 59. And note; the Account of Guardian in Socage is only for the Issues of the Land, for if he receive other Monies, he shall be charged as Receiver. 32 E. 3. Account 60.

Note; The Power of a Guardian in Socage is gone by the Taking of a Husband by the Infant, and yet they shall have Account against the Guardian, if he continues after. 10 R. 2. Account 132. See Lit. 27. contr. 4 E. 3. Account 107. 12 H. 7. 26. 16 E. 2. Account 20. 29 E. 3. 5. contr. See also 33 H. 6. 2. 2 H. 4. 12. That it lies not against a Disseisor.

If a Feme Guardian in Socage takes Husband, Account lies against both; and note; the Age there was tried by Inspection; *quare* 18 E. 3. 55. it lies till the full Age of the Heir, except the Custom enables the Infant at fifteen, and therefore

they were at Issue on the Age. 29 E. 3. 5. See 18 E. 2. Account 120. See a Feme Guardian in Socage took Husband, Account lies against the Baron Sole, for the Profit taken after the Coverture, but for those before, against both. 8 E. 2. Breif 847. See 2 H. 4. 12. a. per Hankf. a Man distrains, &c. in his own Name, and after makes Conusance as Bailiff, he shall not have Aid of the Lord. 7 H. 4. 34. If one receives Rent from my Tenants without my Assent, Account lies, & n' unque Receiver shall not aid him. 4 H. 7. Breif 65.

(b) Note; If the Defendant pleads in Bar, and it is found against him, he shall be awarded to the Fleet, *instanter*, 39 E. 3. 35. but if the Plaintiff there leaves him without accounting, he may have a *Scire facias* against the Plaintiff; and if the Plaintiff does not come at the Day, the Defendant shall be dismissed, and thereby the Plaintiff has lost the Advantage of the Judgment; and per *Ansham*, of the Writ also. 18 E. 2. Account 123. See 1 H. 7. 1. but if he will not account, the Plaintiff may pray Judgment according to the Account 14 E. 3. Account 109.



- not stand in Law, that he shall be kept in Prison without answering 19 H. 6. 4.  
unto the Suit commenced against him.
- D A Man may have a Writ of Account against a Woman as *Receptrix* 14 H. 6. 4.  
*denariorum*, or against a Chaplain, but not against an Infant (a). 19 H.  
6. 5. 3 E. 4. 40. 15 E. 4. 16. *con*'. 16 E. 3. Ac-  
count 52.
- E A Man may have an Account against one as Bailiff of a Court or  
Hundred (b). 13 H. 4. 8. 1 H. 5. 2. *con*'.
- F (c) And a Man shall have an Account against a Prior upon a Re- 2 H. 5. 2.  
ceipt had by his Commoign, but there the Writ doth suppose that he 47 E. 3. 16.  
himself did receive the Money, &c. and shall not say, by the Hands of 4 E. 3. ac.  
his Commoign. And so a Receipt made by the Husband, by the Hands 44 E. 1. but  
of his Wife, is his own Receipt, and the Writ and the Count shall sup- 5 E. 3. 21.  
pose that he himself did receive, &c. without saying by the Hands of Account 100.  
the Wife; but it is otherwise if a Prior or Husband receive Money of a *con*t.  
Stranger, then the Count shall be that he received by the Hands of the  
Stranger, &c. But the Writ shall be general, *Tempore quo fuit receptor*  
*denar*'s, without saying by whose Hands, but he shall shew that in the  
Count or Declaration.
- G And if a Man deliver Goods or Money beyond Sea to deliver to him 41 E. 3. 9, 12.  
again in *England* at a certain Place, he shall have an Account for those  
Goods, &c.
- And if a Man deliver Money to one upon Condition, that if he do 41 E. 3. 10.  
such a Thing, he shall have the Money, if not, then he who delivered 12 H. 4. 18. t  
it shall have it again; if he perform not the Condition, he shall have an ac. 11 H. 4.  
Account against him for the same. 75. Skreen.  
21 E. 3. Ac-  
count 66.
- H (d) If two have Goods in Jointure, or in Common, and one of them  
deliver the Goods to one to render Account, he alone shall have an  
Action for them (e).
- I If two have a Ward, and one take all the Profits, the other shall have 43 E. 2. 21.  
an Account against him (f). P. 45 E. 3. 45 E. 3. 20.

(a) If

(a) In Account, it is a good Plea to say he was under Age at the Time of the Receipt. 21 E. 3. 7. See the Form of the Writ against Baron and Feme, on a Receipt by the Feme. Dyer 202.

(b) Or of a Neif. 2 H. 5. 2. 47 E. 3. 16.

(c) The Count shall not abate, but when it supposes a Receipt by the Hands of the Commonk, or Feme of the Plaintiff, or Defendant; but it shall not oust the Defendant of his Law. But it seems the Count is good, supposing the Receipt immediate in such Case. 13 H. 4. 8. 2 H. 5. 2. 10 E. 4. 6. 15 E. 4. 16. See 4 E. 3. pl. 45. 5 E. 3. pl. 6. *con*'.

(d) See *Contra* 13 E. 2. Account 158. 15 E. 2. Account 119. 31 E. 1. Account 126. where one Jointenant alone was Bailiff.

(e) 12 H. 4. 18. per *Trem*.

(f) *Viz.* Where he was his Bailiff. 21 E. 3. 60. Account 66. 14 E. 3. Account 70.

30 E. 1. Account 127. 31 E. 1. Account 126. And see there a Summons and Severance in Account. See 17 E. 2. Account 122. 47 E. 3. 22. 49 E. 3. 28.

*Note*; In Account by C. against B. as Receiver by the Hands of D. the Defendant pleads that A. made the Plaintiff and Defendant his Executors, and that D. was indebted to A. in such a Sum, and that the Defendant received it. *Resolved*, 1. That Account does not lie by one Executor against the other, for the Possession of the one is the Possession of the other. (2.) That it is no Plea here, if he does not say that he received the Money to render an Account, &c. for one Piece of Money cannot be known from another; but it is otherwise in Trespass or Detinue of Chateles which may be known. 11 H. 4. 79. 13 H. 4. 1.

[119.] (a) If the Husband hath received the Profits of the Wife's Lands, A  
10 H. 6. 11. and die, the Wife shall not have a Writ of Account of the Profits nor of  
the Rents, during the Coverture against the Husband's Executors.

4 E. 3. 17. (b) If a Receiver or Bailiff make a Deputy, yet the Action of Ac- B  
Fitz. Account count shall be brought against the Receiver or Bailiff themselves, and not  
97. against their Deputies; for the Deputies receive the same to their  
Masters Uses.

11 R. 2. Ac- He who is Surveyor or Controller of Lands, shall not be charged in C  
count 48. Account (c).

4 E. 3.  
Account 34. 12 E. 3. *ibid.* 75. & 13 E. 3. *ibid.* 76.

6 E. 3. 3. Ac- An Apprentice shall not be charged to Account by a Writ of Ac- D  
count 102. count; but the Master shall have a Writ of Account against a Servant  
8 E. 3. Ac- who is sent to receive Money, &c. if he be Receiver (d).  
count 94.  
Vi. Account  
as Receiver, the Defendant said that he was his Apprentice, and no Plea, but he was forced to an-  
swer to the Receipt.

(e) The Parish Priest shall not be charged for the Offerings offered by E  
a Writ of Account, if it be not otherwise agreed betwixt them, &c.  
for the Clerk holds the Vessel in which they are put. 6 E. 3. *pl.* 7.

If the King grant unto a Town the Toll of the Things sold in the F  
same Town, for the Walling of the Town, and other necessary Things  
in the Town, and there be Collectors to receive the same, if the Col-  
lectors will not render Account thereof, they may have a Commission  
out of the Chancery to enquire of the Receipt of the Toll-Money,  
and the Receivers, and to hear and determine the same, and to hear  
their Accounts, and a Writ of Attendance unto the Sheriff, to return a  
Jury before the Commissioners.

## Writ of Debt.

C. 5. *pa.* 79. A Writ of Debt properly lieth where a Man oweth another a certain G  
10 H. 6. 7. Sum of Money by Obligation, or by Bargain for a Thing sold, or  
Debt per A- by Contract, or upon a Loan made by the Creditor to the Debtor, and  
mercement the  
in Leet.  
22 H. 6. 56.  
13 H. 7. 3. in Debt against Successor upon Account to his Predecessor, which comes to the Use of  
the House, the Writ shall be in the *Debet*.

(a) See 11 R. 2. *Account* 49. For Rent  
issuing out of a Freehold, by one during  
the Coverture, the Feme shall have Ac-  
count, and not the Husband's Executors;  
*contra* of other Rescuits.

(b) And the immediate Bailiff shall have  
Account against his Deputy. *Note*; He  
surmised that he had accounted. See 4 E.  
3. 17. & 8. 11 R. 2. *Account*—.

(c) See 41 E. 3. *Account* 34. 11 E. 3. *ib.*  
75. 13 E. 3. *ibid.* 76. 12 E. 3. 13 E. 3.

(d) If they are not in a Bag sealed. 29  
E. 3. 20. 8 E. 3. 261.

(e) 25 E. 3. 46. But if he was his Pro-  
curator of the Church, to receive to his  
Use the Offerings, &c. Account lies from  
the Time that he was *Ballious Ecclesie*. 30  
E. 3. 1. 25 E. 3. 46.



K the Debtor will not pay the Debt at the Day appointed that he ought to pay it, then (a) the Creditor shall have an Action of Debt against him for the same; and it may be sued in the County before the Sheriff by Justices, as well as in the Common Pleas; and the Form of the Writ is sometimes in the *Debet* and *Detinet*, and sometimes in the *Detinet* only, and not in the *Debet*, and if it be (b) in the *Debet* it shall abate. It shall be always in the *Debet*, and *Detinet*, when he who makes the Bargain or Contract, or lends the Money, or he to whom the Bond is made, bringeth the Action against him who is bounden, or Party to the Contract (c) or Bargain, or unto the Lending of the Money; and Money delivered by the Writ. But if a Man sell 20 Quarters of Wheat, or a Horse; if he bring Debt for the Horse, the Writ shall be in the *Detinet* only, and the Form of the Writ sued in the County before the Sheriff for Money, is such:

In Debt against Husband and Wife for a Debt before Coverture, the Writ

shall be *Debet* and *Detinet*; so in Debt against or for the Successors in Respect of Obligation made to the Predecessor, 47 E. 3. 23. 40 E. 3. 16. 9 E. 4. 41. 47 E. 3. 23. If the Heir be to bring Debt, it shall be in the *Detinet*.

(d) *Rex Vic' Surr' salutem. Præcipimus tibi, quod Justicies A. quod juste & sine dilatione redd' B. 20 s. quos ei debet ut dic' sicut rationabilit' monstrare potest, quod ei redd' debet ne amplius inde clamorem audiamus pro defectu justitiæ, &c. Teste, &c.*

I And if the Writ of Debt be for other Goods or Chattels than Money, Ant. 70. then the Writ of Debt shall be such:

*Rex Vic', &c. Præcipimus tibi, quod just' A. &c. quod' redd' B. quendam librum, vel quendam cyphum, vel quendam equum, vel duos agnos pretii, &c. quem vel quos vel quæ ei injuste detinet sicut, &c.*

K And if a Writ of Debt be brought in the County before the Sheriff by Justices, the Plaintiff may remove the Plea unto the Common Pleas by a *Pone*, without shewing Cause in the Writ: But the Defendant shall  
N n not

(a) See Debt and Detinue of Things brought against Executors by several *Præcipes* in one Writ. 11 H. 6. 48. 12 H. 6. 1.

(b) Note; If Lessee for Years rendring Rent makes his Executors and dies, Debt lies against them in the *Detinet*. 10 H. 7. 5. or it may be in the *Debet* and *Detinet*. 11 H. 6. 16. but by *Hargraves's Case*, it shall be in the *Debet* only. 5 Co. It is good either way for the Occupation. 14 H. 4. 29. but if Lessee for Years of a Rent dies, for the Rent incurred after his Death; it lies in the *Detinet*. 11 H. 6. 36.

See 14 H. 4. 28. 'Tis said by *Fort.* that an Executor may waive a Lease for Years made to the Testator, rendring Rent. See 11 H. 6. 36. 'Tis said, if a Termor makes his Executors, and dies, and one of the Executors occupies the Term, that Debt lies against him alone in the *Debet* and *Detinet*. *Vide Post. M.*

See 19 H. 8. 8. 10 H. 7. 5. 22 E. 4. 21. 41 E. 3. Brief 54. 47 E. 3. 27.

That a Writ of Debt lies for a Fine to the King, *vide ant.* 96.

Tho' *W. 2. cap. 11.* gives an Action against the Gaoler that lets out of Prison, one committed to him for Arrearages of Account, yet if one be committed to him upon Condemnation in Debt, and he lets him go at large, he shall have an Action of Debt against him, tho' the Statute be penal. *Plowd.* 178. a.

(c) See 50 E. 3. 16. 11 H. 7. 6. *Vide infra M.* 19 H. 8. 10 H. 7. 8. 22 E. 4. 21.

(d) Note; On a *Justicies*, the Sheriff cannot award a *Capias* or a *Ca. Sa.* as it seems, nor if the Suit be removed by *Pone* into C. B. and the Sheriff return *Nil habet*, the Court cannot grant a *Capias*; but 'tis otherwise on a *Replevin* removed, *ut supra.* 3 H. 6. 54. Stat. 25 E. 3. cap. 17.

not remove the Plea out of the County without shewing Cause in the *Pone*, and yet in the End of the Writ it shall be said, *Fiat execut' istius brevis, si causa sit vera, aliter non.* And the Causes wherefore the Defendant may remove the Plea, are many, as appeareth in the Register. One, if the Defendant plead a foreign Plea, which cannot be tried in the County, &c. Or if the Defendant shew that he, before whom the Plea is depending, doth maintain the Plaintiff, or favour him, &c.

And if the Plea of Debt be sued within any Liberty, or Court of any Borough or City, &c. the Plaintiff may remove the Plea by a *Recordare* into the Common Pleas without shewing any Cause in the Writ. But if the Defendant sue to remove the Plea by a *Recordare* into the Common Pleas, out of any Town or City, he ought to shew Cause in the Writ, as before is said. And if the Sheriff remove the Plea out of the Court by a *Pone* at the Suit of the Defendant or Plaintiff; and afterwards the Bailiffs or Officers of the Court proceed in the Plea, and give Judgment, and award Execution, &c. then the Defendant or he against whom the Judgment is given, and Execution awarded, shall have an Attachment against the Bailiffs, or those who so proceeded to Judgment, &c. to answer as well the King for the Contempt, as the Party his Damages, &c. And the Form of the Writ of Debt in the Common Pleas is,

*Rex Vic', &c. Præcip' A. quod juste, &c. redd' B. C. s. quos ei debet & L. injuste detinet ut dicit. Et nisi fecerit, & præd' B. fecerit, &c. tunc sum' per bonos sum' præd' A. &c.*

29 H. 8. 8.  
Vide supra.  
H. &c. ib.

(a) And the Rule in the Register is, *Quod in brevi de debito de catallis M. nunquam dicit' quod ei debet.* And if the Debt be brought by Executors for a Duty due to their Testator, the Writ shall be *Quos ei detinet*, and not *Debet & detinet*, because they were not Parties to the Contract. And so if Debt be brought by the Creditor against Executors for the Debt of the Testator, the Writ shall be, *Quos ei detinent*, &c. and not *Debent & detinent*, although by the Writ he demand Money, viz. 20 l. or other Sum of Money.

[120.] If a Man make B. and a Monk his Executors, and is indebted un- A. to another, the Action of Debt shall be brought against B. and the Abbot and the Monk; and the Form of the Writ shall be such:

*Præcip'*

(a) Note; The Judgment is for the Chattels or the Value, and so Conditional. See 50 E. 3. 16. 9 E. 4. 49. *Rass. Entr.* 174. *Co. Lit.* 90.

If Judgment be given either for or against Executors in Debt for a Duty due by the Testator, the Writ brought on such Judgment shall be only *Detinet*. 11 H. 6. 56. adjudged. 10 H. 7. 5. 11 H. 6. 36. So if the Executors assign Auditors to the Testator's Accountant, Debt on the Account shall be in the *Detinet* only. 10 H. 7. 61. 11 H. 6. 17. 20 H. 6. 4. See 2 H. 4. 13. Note the Reason of these Cases, where the Foundation of the Action appears of

Necessity to commence in the Testator, the Writ shall be in the *Detinet*, *ut supra*. So if they (the Executors) bring Debt on a Judgment given in Trespass brought by them of Goods taken out of the Possession of their Testator; *contr.* if it was *De bonis Testatoris extra custodiam sua'*; per Park.

But if they take an Obligation for a Contract made to the Testator, or if they sell Goods of the Testator, it shall be *Debet* and *Detinet*, because the Commencement of the Action was in the Executors. 20 H. 6. 415. b. That it shall be in the *Detinet* adjudged. See 17 E. 3. Brief 87.



*Præcip' B. execut' testamenti S. & Abbati de C. & frat' A. de C. canonico ejusd' Abbat' de C. coexecut' præd' B. testamenti præd' 20 l. And if they bring an Action the Writ shall be: Præcip' D. &c. qd' redd' B. execut' testamenti S. & Abbat' de C. fratri A. de C. concanon' ejusdem Abbat' de C. coexecut' præd' B. testamenti prædict'.*

**B** And if a Man be bound unto *B.* and an Abbot in 20 l. and *B.* dieth, his Executors and the Abbot shall join in the Action of Debt, and the Writ shall be such: *Lit. 61.*

*Præcip' C. &c. quod juste, &c. redd' B. & M. execut' testamenti R. & Abb' de C. 10 l. &c. quas, &c. Et nisi, &c. & præd' execut' & Abb. fecerint te, &c.*

And if a Writ of Debt be brought against the Heir upon an Obligation of his Ancestors, the Writ shall be such: *Præcip' A. de S. fil' & hæ'r' B. quod redd', &c. (a).*

**C** (b) And if there be divers Heirs, then the Writ shall be, *Præcip' A. de S. fratri & uni hæred' B. & B. consanguineo & alteri hæred' ejusdem B. &c.*

**D** And if a Man be in Debt, and die intestate, or the Executors refuse to be Executors, for which the Goods come to the Hands of the Ordinary, the Creditors shall have an Action of Debt against the Ordinary by the Statute of *West. 2. cap. 19.* and the Writ shall be such:

(c) *Præcip. A. Episcopo Lincoln' ad cujus manum bona & catalla que fuer' B. qui obiit intestatus, ut dic', devener', quod juste, &c. redd', &c.*

And if the Goods come unto the Hands of the Ordinary, and afterwards the Ordinary maketh Executors, and dieth, the Creditor shall have an Action of Debt against the Executors of the Ordinary, and the Writ shall be such:

*Præcip' A. de B. & C. de T. execut' testamenti magistri R. de P. nuper Decani Ecclesia beati Petri Eborac' & custod' spiritualitatis Archiepisc' Eborac'*

N n 2

(a) See a Petition in Parliament against charging the Heir in such a Case. *Parl. 25 E. 3. No. 35. Note*; the Words *Fil' & hæred'* were omitted, yet held good. 10 *E. 3. 15.* yet 'tis otherwise, if the Writ be *Filio & hæredi apparenti*, and he counts against him as Son and Heir generally. *Paf. 35 El. Rot. 242. Newdigate's Case, 32 E. 3. Brief 289.* and it shall be in the *Debet. Ib. 294.*

(b) See 11 *H. 7. 12. 11 E. 3 Debt 7. 10 E. 3. 63. 7 El. 277.*

(c) See 11 *H. 4. 71.* per *Hankf.* without counting that he is Ordinary of the Place. See 17 *E. 2. Brief 822.* that it does not lie at Common Law. *Dyer 297. Vide contr. and Note*; where 'tis against the Bishop only for the Goods which he administred within his Diocese, adjudged otherwise, and *Note*; if the Ordinary administers 100 l.

and afterwards commits Administration, he is yet liable. 12 *R. 2. Administration 21.*

See 17 *E. 2. Brief 822.* the Writ was brought against the Dean himself as Guardian, &c. and they were at Issue thereon. See 11 *E. 3. Executor 77.* where a Writ was brought against the Executors of a Dean. *Ald.* doubted. For by him here the Executors are to be charged, for that the Goods of the Intestate came to the Hands of the Ordinary, and yet it seems they are not chargeable as Executors of the Ordinary, no more than the Executors of an Administrator. See *Brudenell's Case. 5 Co. 9.*

*Note, The Stat. West 2. cap. 21. 31 E. 3. 11.* Administrators and the Ordinary charged in the same manner, viz. as Executors. See 24 *E. 3. 54. Rot. Parl. 9 E. 2. M. 5. Dyer 271.*

Joinder in Action 75.  
H. 7. 8. Keb.  
A Lease for Years to a secular Man and an Abbot; *Quare* how they hold. See 15 *Eliz. Plow. 441.* The Heir of the Heir shall be charged.

*Eborac' sede vacante, ad cujus manus bona & catalla qua fuer' E. de B. qui obiit intestat', ut dicitur, devenerunt, quod juste, &c. redd', &c. (a).*

And it appeareth by the Register, that in *Anno 16 E. 3.* the Plaintiff was (b) answered unto such Writ which he brought against the Executors of the Ordinary.

14 H. 4. 30.  
so against  
Guardian of  
the Spiri-  
tualities.

And there is a Writ of Debt in the Register for the Ordinary, against him who was indebted unto him who died intestate. But the Opinion of the Sages of the Law at this Day is, that the (c) Ordinary shall not have an Action of Debt against those who were indebted to the Intestate, because the Action is given to the Administrator, and the Ordinary may commit Administration of the Goods (d) when he pleaseth. But before the Statute of 31 E. 3. cap. 11. the Administrators could not have an Action of Debt against the Debtors, wherefore it was then thought Reason, that some Person should have the Action for those Debts, &c. But the Ordinary at this Day may have an Action of Trespass for taking of the Goods out of his own Possession, but not for taking

(a) *Quod juste, &c.* Note ; this Clause is where the Executors refuse. *Reg. 141. Dyer 236. 6 Eliz. 280. a. 11 E. 3. Bro. Executors 161. Fitz. 77. 17 E. 2. Brief 822.*

(b) Note ; This Writ here is mistaken, for the Writ which he speaks of is brought against the Deacon himself. 16 E. 2. and not against his Executors. 16 E. 3. See 11 E. 3. Executors 77.

(c) See 7 H. 4. 18. 18 H. 6. 23. accordant. And therefore, if A. be indebted to B. and B. to C. and B. dies Intestate, C. cannot attach the Debt of B. in the Hands of the Ordinary by the Custom of Lond. *Dyer 247. Quare Kekw. 127.* if he can release the Debt. See 16 E. 2. Executors 77. per Tr.

(d) Even by Parol; *Quere 9 H. 5. 5.* he may repeal it, and therefore the Committing the Administration transfers the Power from the Ordinary to the Administrator, and therefore the Administrator shall have Trespass for a Trespass done to the Goods, or Debt for Rent Arrear, before the Administration committed, and after the Death of the Testator, for the Law adjudges him Administrator *ab initio.* 18 H. 6. 23.

Note ; No Account lay for an Administrator at Common Law. 19 E. 3. Administrator 20. also at Common Law, before the Stat. 31 E. 3. cap. 11. the Ordinary might commit Administration, and therefore he shall be discharged for doing it. *Plo. 280.* and Debt was maintainable against them, but not by the Name of Administrators, but as Executors. 38 E. 3. 21. and the Action is given against them as Administrators, by the Stat. 31 E. 3,

&c. and so agreed *per omnes.* 11 H. 4. 73. and *Lib. Intr.*— And therefore the Action against them is founded on the Stat. as well as the Action for them, and therefore he that administers *de son Tort,* shall not be called Administrator, but Executor. 35 H. 6. 31. per Moile.

The Form of the Count is, *cui Administratio, &c. per I. S. Official' loi illius ordinari. apud S. post Mort' predict' G. commiss' fuit ;* so that it is necessary for the Plaintiff to shew that the Defendant was made Administrator by the Ordinary in his Count, else 'tis not good. 44 E. 3. 16. per Cur. 11 H. 4. 73. per Thorn. Hill and Culp. contr. *Hankf.* See contr. 9 H. 5. 7. for 'tis there said, that it shall be intended to be committed by the Ordinary ; and for that it may be so intended, you need not count on a Commission by the Ordinary in an Action against them. 35 H. 6. 46. (See *T. Fon.*) also the Ordinary's Right might thereby be drawn in Question. 37 H. 6. 27, and therefore in this Case 'tis no Plea to say *N'unique Administrator ne unque Administrator come Administrator ;* but only that Administration was not committed to him. 35 H. 6. 38. 9 H. 5. 7. 11 H. 4. 73, per Hill, and if the Defendant pleads that Administration was committed to him, and I. S. not named, to which he agreed, the other shall not say that I. S. never administered, without traversing the Commission of the Administration, or the Agreement ; but 'tis otherwise, if such Agreement be not surmised, for there *per Cur.* 'tis a good Issue, that I. S. never administered. 8 H. 6. 2. 9 H. 6. 6. 20 H. 6. 1.



taking them out of his Possession who died intestate, as Administrators may have.

**E** If a Man be retained in *England* to do Service beyond Sea, receiving 10 *l.* per An. he shall have an Action of Debt in *England* where the Retainer was.

**F** If a Man marries a Woman who is in Debt to divers Persons, the Husband and Wife shall be sued for the Debts, living the Wife: But if the Wife die, the Husband shall not be charged for the Debt after the Death of the Wife, if the Creditor of the Husband and Wife do not recover the Debt during the Coverture, which was due by the Wife before the Coverture: For then, altho' the Wife dieth, yet the Husband shall be charged for that Debt by that Recovery after the Death of the Wife.

48 E. 3. 1.  
49 E. 3. 25.  
20 H. 6. 11.  
22.  
8 E. 4. 11.  
F. Dett. 168.

**G** (a) A Man shall be charged in Debt for the Contract of his Bailiff or Servant, where he giveth Authority unto his Bailiff or Servant, to buy and sell for him: And so for the Contract of the Wife, if he give such Authority to his Wife, otherwise not.

2 R. 3. Fitz.  
Dett. 3.

**H** If a Man lease Lands for Years rendring Rent (b), and for Default of Payment, that he shall re-enter; if he do re-enter in the Land for not Payment of the Rent, yet he may have an Action of Debt for the Rent, for which he doth re-enter, and in the Writ shall recover the Rent, for which he re-entred.

17 E. 3. 48.  
18 E. 3. Debt  
6. 36 E. 3. 7.  
Debt 10.

**I** (c) If a Man bind him and his Heirs unto another in 20 *l.* and dieth, the Heir shall be charged to pay the same, if he have Lands by Descent in Fee-simple from his Ancestors, otherwise not. But if a Man be bounden in an Obligation to one and his Heirs, and the Obligee dieth, his Heir shall not have an Action of Debt upon the Obligation, but his Executors. *Post.* 122. G.

14 E. 3. Debt  
135. A Man  
was bound  
to one and  
his Heirs,  
and holden  
the Heir  
should not  
have Debt

living the Executors. 9 H. 6. 58. The Heir shall not have Detinue for a Deed bailed by his Father. 19 H. 6. 4. 48 E. 3. 12. It is said, that if the Ordinary do not commit Administration, the Heir shall have Debt.

### (a) If

(a) But if the Bailiff in that Case makes a Contract without any special Authority, and it comes to his own Use, *Quare* 2 H. 3. Debt 8. 34 E. 1. Debt 6. 163. 13 H. 4. Debt 179. 21 H. 7. 4. See a Diversity between an Agreement for Goods and the coming of them to the Use of the Master. See 27 H. 8. 25.

(b) So if he makes a Lease for Life rendring Rent, and surrenders, &c. 17 E. 3. 48, 73. 18 E. 3. 10. 30 E. 3. 7. 38 E. 3. 10. *contr.* by some, 19 H. 6. 42. for the Re-entry is not a Penalty, so of a *Nomine poena*. See 38 E. 3. 22. 18 E. 3. 9. 19 H. 6. 42. 6 H. 7. 3.

(c) See a special Judgment against the Heir on a *Nil dicit*. *Dyer* 344. when against the Executors of the Heir; so if the eldest

Son enters after the Death of the Father, and dies, Debt lies against the younger Son, as Heir to the Father. *Dyer* 368. *Note*; A. seised of one Acre at Common Law, and 3 Acres in Gavelkind, obliges himself and his Heirs by Bond to B. and dies, having 3 Sons C. D. and E. E. aliens his Purparty, B. brings Debt against C. and D. and pending the Writ, E. repurchases. (1.) If the Elder had not Affets at Common Law, it seems of Necessity, that the Writ ought to be against all of them. 11 H. 7. 12. 38 H. 6. 22. and so of a Vouchee, for they are in *eodem gradu*. (2.) If the Elder took by Discent at Common Law, it seems that he shall be charged Sole; *Quare*, for thereby his Purparty in Gavelkind should be also liable, and therefore adjudged.

49 H. 2.  
Debt 166.  
45 E. 3. 24.  
ac. if it be  
by Deed. 15  
E. 4. 32.  
cont. per Cov.  
37 H. 6. 8.  
ac. 21 H. 7.  
5. 7 H. 6. 19.  
11 H. 5. 95.  
Thirning and  
Skreen, that  
he may di-  
strain for the  
Penalty,  
quodnoneſtlex.

[121.]  
But note,  
that if a

Man be in Priſon by *Capias ad Computand.* and after eſcape, no Debt, but Action upon the Caſe, be-  
cauſe he is not in Priſon for any Duty, by *Choke and Pigot* 1. 5 E. 4. 19. 16 E. 4. 2 and 3.

or

(a) If any Man promiſe to one 20 l. to marry his Daughter, and he K  
marrieth her, he ſhall have an Action of Debt againſt him upon that  
Promiſe. H. 31 E. 3.

(b) If a Parſon have an Annuity in Fee in the Right of his Church, L  
and the Annuity is behind, and the Parſon dieth, his Executors ſhall  
have Debt for the Arrearages of the Annuity in the Life of the  
Teſtator.

If a Man grant to one a Rent in Fee, and further grant, that if the M  
Rent be behind, &c. that he ſhall forfeit for a Penalty 40 s. to the  
Grantee and his Heirs, if the Rent be arrear, the Grantee ſhall have  
Debt for the Penalty. And ſo the Heir ſhall have the Penalty, and  
ſhall have Debt for the ſame, becauſe it is an Inheritance, and perhaps  
may continue, &c.

If a Man be condemned in Debt or Damages, and be committed A  
unto Priſon for the ſame; if the Gaoler ſuffer him to go at Liberty,

judged. 11 E. 3. Dett. 27. contr. but where he  
has Aſſets at Common Law. See 38 E. 3. 22.  
(3.) It ſeems there may be one Action a-  
gainſt them, and ſeveral Counts, viz. a-  
gainſt E. as Heir general, and againſt C.  
and D. as Heirs by Gavelkind, for if he  
does not count ſeverally, he ſhall not have  
Execution but of the Lands in Gavelkind.  
*Quare.* 11 E. 3. Dett. 7. and ſo in Caſe of  
Voucher. 4 E. 3. 55. per *Will.* (4.) The  
Writ ought to be againſt C. D. and E.  
tho' E. has nothing, but if C. had Aſſets  
at Common Law, and D. and E. nothing,  
it ſhould be brought againſt C. alone, but  
if the Writ had been againſt all, ſeeing  
E. had nothing, the whole ſhould be le-  
vied on the others. 14 E. 3. 7. 6 E. 3. 50. (5.)  
Altho' the Heir aliens, and repurchaſes  
before, or pending the Writ, he is yet  
liable. 26 H. 8. 1. 27 E. 3. 82. 10 E. 3. 15.  
adjudged. See 19 H. 6. 46. 48 E. 3. 32. 40  
E. 3. 10. (6.) If the Writ were brought  
againſt the elder Son only, and pending  
that the Land in Gavelkind had deſcend-  
ed to him and the other, the Writ ſhould  
abate; per *Shard.* 11 E. 3. Debt 7. See 11 H.  
7. 12. If A. ſeiſed of Lands on the Part of  
his Father, bind himſelf, and dies without  
Iſſue, ſeveral Actions may be brought againſt  
the ſeveral Heirs, but only one Execution.  
*Quare*, and *Note*; It ſeems that by the Re-  
purchase, he ſhall abate the Writ againſt  
the Elder only. *Dyer* 230. and 204. Debt  
was againſt three Heirs in Gavelkind; they  
were entlawed, and two purchaſe a Char-

ter of Pardon, they ſhall not plead No-  
nage of the third, becauſe he is out of  
Court, but muſt answer alone. *Dyer* 224.  
See where the Heir ſhall have Debt on an  
Obligation to his Anceſtor. 49 *Aſſ.* 4. See  
Debt by the Heir on an Obligation made  
to his Father and his Heirs, the Defend-  
ant pleads a Release by the Father's Exe-  
cutors, but was forced to answer to the  
Deed of his Father. 14 E. 3. (See 19 H.  
6. 41. a Difference between Debt and De-  
tinue by the Heir.) See 14 E. 3. Dett. 135,  
139, 140.

(a) If a Promiſe be to pay one 40 l. for  
Service done, Debt lies, and he ſhall  
count *unde deſeruit obligat.* in ſuch a Sum.  
29 E. 3. 25. See if one promiſe to another  
20 l. if he will marry his Daughter, Debt  
lies without any Specialty. 31 E. 3. Dett.  
8. 34 E. 1. Debt 159. 1 R. 2. Debt 166.  
See 45 E. 3. 24. 29 E. 3. 33. *Ant.* 44. O.  
but 14 E. 4. 6 contr.

(b) Debt by the Executors of a Parſon  
for Arrears of an Annuity, which his Pre-  
deceſſor had by Preſcription. 12 H. 6. 8.  
ſo a Succeſſor ſhall be charged with the  
Arrears of an Annuity incurred in the  
Life of his Predeceſſor. 21 H. 7. 5. yet  
the Succeſſor of St. *Croſs* could not reco-  
ver Damages for Arrears of Annuity in  
Time of his Predeceſſor, but only for Ar-  
rears in his own Time; nor could a Par-  
ſon who was Preſentative, and not Ec-  
cleſiatic. 20 *Aſſ.* 4.



or he escape out of Prison, (a) the Gaoler shall be chargeable in Debt to him at whose Suit he was imprisoned, and his Executors (b).

**B** If a Man lend another Man a Horse until a certain Day, and then <sup>50 E. 3. 16.</sup> he to redeliver the Horse or 10*l.* at the same Day, after the Day if the Horse be not delivered, it is in his Election to bring an Action of Debt for the Horse in the *Detinet*, or an Action of Debt for the 10*l.* in the *Debt* (c).

**C** (d) If a Man make a Lease for Life unto a Woman, rendring Rent, <sup>26 E. 3. 64.</sup> if she marry, and after the Rent is behind, and the Wife dieth, the <sup>Debt 180.</sup> Husband shall be charged in an Action of Debt for the Rent behind, be- <sup>10 H. 6. 11.</sup> cause he took the Profits of the Lands by Reason of his Wife; otherwise <sup>9 H. 6. 29.</sup> it is of an Obligation made by his Wife before Marriage, then the Hus- <sup>20 H. 6. 45.</sup> band shall not be charged if a Recovery be not against him and his Wife <sup>Ascough.</sup> 49 E. 3. 25. in the Life of the Wife (e).

If a Woman be endowed of a Rent, and afterwards taketh Hus- <sup>Vi. 14 H. 6.</sup> band, and the Rent is arrear, and the Wife dieth, the Husband shall <sup>26. 10 H. 6.</sup> have an Action of Debt for the Rent, because it was a Duty in him <sup>11.</sup> during the Marriage. But if a Man be bounden unto a Woman, and <sup>4 Co. 89.</sup> she taketh Husband, and the Day of Payment cometh during Marriage, and after the Wife dieth, the Husband shall not have an Action of Debt upon

(a) *Note*; Tho' the Gaoler retakes him, if it be after the Writ, 'tis no Excuse. 31 E. 1. Debt 162. *Note*; on the Escape, against the Sheriff 'tis a new Debt; and therefore, if the Mayor of the Staple suffers one to go at large, who is in Prison for Debt for Merchandise, and a new Mayor is, Debt lies against him, not on the Statute-Staple, but at Common Law: So by *Paston*, a Release made to him who escapes is no Plea in Debt against the Sheriff. 9 H. 6. 19. Debt on Escape does not lie against an Heir or Executor of a Gaoler. *Dyer* 271, 322. 41 Aff. 15. In Debt by the Conusee of a Statute-Staple, *Note* 13 E. 3. *Barr.* 253. Debt lies by the Abbot of *W.* for suffering *A.* to go at large, who was delivered to the Gaoler by Auditors for Arrears of Account, and 'tis agreed, (1.) That if *A.* escapes, and after sues an *Ex parte talis*, yet pending that, Debt lies against the Gaoler. (2.) If the Defendant let him go at large by the Command of the Abbot, tho' it be without Deed, yet he is discharged; for the Abbot was sovereign Gaoler, and the other but his Deputy; *aliter*, if it had not been so. See 10 H. 7. 3. 27 H. 8. 24. *Cawary's Case*. If three are imprisoned, and one only escape, Debt lies against the Sheriff, if it be on a joint Condemnation. 20 H. 7. *Kelw.* 68.

(b) See 7 H. 6. 5. and Debt against a Sheriff. 11 E. 2. Debt 172. 13 H. 7. 2. 34 E. 1. Debt 162. Stat. 1 R. 2. and *Westm.* 2. and *infra* P.

(c) See 13 E. 4. 4. 9 E. 4. 37, 49. 26 E. 3. 71.

(d) *Note* Sir *W. Lovings's Case*, 26 E. 3. 64. *A.* grants a Rent to *B.* for Life out of the Manor of *C.* and afterwards enfeoffs *D.* of the Manor who takes *G.* to Husband, and then *B.* dies, and his Executors bring Debt against *G.* and adjudged, (1.) That for all Arrears incurred after the Coverture, Debt lies against the Husband; or if he were Dead against his Executors; But (2.) For all Arrears incurred before the Coverture, the Action shall be brought against the Husband and Wife. See 10 H. 6. 11, 12. accordant.

(e) See 10 H. 6. 10 per *Rabb.* and *Note* 12 R. 2. Account 49. *A.* Lessee for the Life of a Feme Covert rendring Rent, *B.* receives the Rent as Receiver, the Husband dies, the Wife shall have Account against *B.* and not against the Executors of the Husband; *aliter*, as it seemed to *Rabb. &c.* if the Resceit had been of a personal Duty.

See 1. Lev. 26. 4 Co. 89. 10 H. 7. 17. 6 E. 2. Execution 109. 10 H. 6. 12. 49 E. 3. 25. 39 H. 6. 22.

upon the Bond, because it was a Duty due unto the Wife, and a Thing in Action before the Marriage (a).

19 H. 6. 14.  
*Quere. Ascuc  
pro' Newton  
con'.*

(b) If a Parson have an Annuity in Fee, and the same is behind, and D the Parson doth resign, yet he shall have an Action of Debt for the Arrearages before the Resignation.

And if a Man lease a Manor for Life, and the Rent is behind, which E the Tenants who hold of the Manor are to pay, and the Lessee for Life of the Manor dieth, his Executors shall have Debt for the Arrearages of the Rent due by the Tenants of the Manor.

(c) And so if the Tenant for Life of the Manor, surrender his Estate to him in the Reversion of the Manor, yet he shall have Debt against the Tenants of the Manor for the Arrearages before.

37 H. 6. 25.  
*If a Liberate  
be delivered  
to Customers  
or other  
Collectors  
that will  
satisfy, they*

(d) If a Man have a Patent from the King to have a certain Sum F for Term of Years, or for Life out of the Customs of London, and thereupon he have a Liberate to the Customer to pay him, which he delivereth to the Customer, at which Time the Customer hath enough in his Hands to pay him; now by the Delivery of the Liberate, and the Assets in the Hands of the Customer, the Customer is Debtor unto him, and he shall upon this Matter have Debt against him.

satisfy, they shall be discharged against all others. 27 H. 6. 9. ac. 21 H. 6. Debt 43.

(e) If two submit themselves to an Award, and the Arbitrators award G that one shall pay the other 10*l.* he shall have an Action of Debt upon that Abitrament.

37 H. 6. 35.

(f) If an Abbot hath an Annuity in Fee, and the same is behind, H he shall not have an Action of Debt for the Arrearages, because the Annuity continueth.

Neither shall a Parson have an Action of Debt for the Arrearages of I an Annuity, which he hath in Fee during the Time that he is Parson :  
But

(a) And yet 'tis held, the Husband may release it. 15 H. 6. 41.

(b) See accordant 19 H. 6. 42. and so Note; the Arrears here do not belong to the Successor, yet see 19 H. 6. 44. where 'tis a sole Corporation Regular, which cannot make an Executor, as an Abbot, Prior, Master or Warden of a Hospital, &c. there the Successor shall have the Arrears of an Annuity, and so of a Corporation Aggregate. 19 H. 6. 42. per *Asine*. See 16 E. 3. 22. 4 E. 3. 9.

(c) See accordant 9 H. 7. 16, 17. yet if it be a Lease for Years, the Lessee cannot have Debt during the Term.

(d) And so if after Delivery of one Tally, another is delivered, it lies for that first delivered. 21 H. 6. Debt 43.

(e) Note; In Debt on Arbitrament, the Cause why such Sum was awarded, shall not come in Debate, but in Debt on

Account before Auditors, it may be debated, whether there were such Account, or if there was such Resceit by the Defendant. 20 H. 6. 6. And therefore, if the Arrears of a Lease for Years, or a Thing be delivered, for which Detinue lies, are put in the Account, the Party shall have his Law, if it appears by Examination; for notwithstanding such Account, he may have Debt for the Rent or Detinue for the Goods. 20 H. 6. 16. and therefore in Debt on Arrears of an Account before Auditors, 'tis a good Plea, *Nul tiel Account*, or *Nil debet modo & forma*, and give in Evidence, there was not any such Account; for if so, there cannot be any Arrears. 20 H. 6. 24.

(f) See 19 H. 6. 42. the Case of a designed Parson well debated. See 17 E. 3. 12. 19 E. 2. Debt 176. 10 H. 6. 24. 20. and 28 H. 6.



But if he resign, he shall, or if he dieth, his Executor shall have an Action of Debt for the same. And if a Man who is (a) Bailiff do account (b) before Auditors, and it is found that he hath expended more than he hath received, for the Surplusage he shall have an Action of Debt against the Lord whose Bailiff he was. But if a Receiver account, and is found in Surplusage, many say that he shall not have an Action of Debt for the same, because he is bounden to lay out any Parcel thereof: But it seemeth if he do it by Command of the Lord, that then it is Reason that he have an Action of Debt against the Lord for the Surplusage.

- K (c) An Abbot shall be charged in an Action of Debt upon a Loan of Money made unto his Predecessor, if the Money came to the Use of the House. 41 E. 3. Debt 127.  
3 E. 4. 26.  
the Writ shall be General, and the Count special. 20 H. 6. 21.  
Newton. 28 H. 6. 4. 59.  
H. 8. 22. ac.
- L An Attorney shall have an Action of Debt against his Client for Money which he hath paid unto any Person for his Client, for Costs of Suit, or unto his Counsel, &c.
- M (d) If a Man contract to pay Money for a Thing which he hath bought; if he take a Bond for the Money, the Contract is discharged, and he shall not have an Action of Debt upon the Contract. 1 H. 6. 8. per Babbington. 9 E. 4. 20. and so 10 H. 7. 21. and 24. 22 H. 6. 16. 21 H. 7. 5. Carter. 3 H. 4. 17.

- N (e) If a Man maketh a Lease for Years, rendring Rent, of Lands deviseable by Will, and afterwards deviseth the Reversion of the same Lands unto a Stranger in Fee, the Devisee shall have an Action of Debt for the Rent reserved, without any Attornment of the Tenant for Years. But if the Lessor hath granted the Reversion by Fine or Deed, the Grantee shall not have an Action of Debt without Attornment of the Lessee for the Rent reserved. 5 H. 7. 18. ac. so Lord by Escheat of a Reversion.
- O (e) If a Man be indebted, and entreth into Religion, his Executors shall be sued for the Debt, and not the Abbot who accepted him into Religion. 4 E. 4. 25. Danby 5 H. 7. 24. Brion, 13 H. 4. Debt 167. 5 H. 5. 8.

O o

(a) If

(a) See 7 H. 4. 3. Note; this Allowance before Auditors is made Parcel of the Account, and as well of Record, and therefore on such Surplusage, Debt lies against the Executors. See 10 H. 6. 25. so adjudged.

(b) Because a Bailiff by his Office is bound to be at Expences. 29 E. 3. 20. and so it seems is a Receiver to merchandize, &c. and a general Receiver retained to travel for his Resceits, &c. *contr.* of a Receiver of a certain Sum, for he shall have no Allowance of such Expences as he makes without Orders; and Note, in such Action for Surplusage by a Bailiff or Receiver, he shall wage his Law. 14 H. 6. 24. 36 H. 6. 6. For the Auditors are

made Judges in Advantage of the Master, and not of the Bailiff; and this was so at Common Law; *sed contr.* adjudged by all the Justices in C. S. 21 H. 6. 16. 19 E. 2. Debt 176.

(c) See 41 E. 3. Debt 127. 15 E. 4. 4. 22 E. 3. 8. 5 H. 7. 25. 39 H. 6. 22. 22 H. 6. 56. (L.) 10 H. 4. Debt 158.

(d) But 'tis otherwise, if a Stranger makes an Obligation for the same Debt. 35 E. 3. Debt 83. See 11 H. 4. 79. 13 H. 4. 1. 10 H. 7. 21.

(e) See 13 H. 4. Debt 167, 467. 4 E. 2. Ib. 171. 5 H. 7. 18. 34 H. 6. 6. Lit. 130. (O.) See 5 H. 3. 8. 9 E. 2. Debt 171. but 5 H. 7. 20. 4 E. 4. 25. 18 E. 4. 19. *seem contr.*

7 H. 6. 5. 1 (a) If a Man be condemned in Trespafs, or in Debt upon a Bond, P  
 H. 6 Debt where he denieth his Deed, and afterwards he is taken by a *Capias pro*  
 26. 7 H. 4. *fine* at the King's Suit within the Year, and committed to Prison; if  
 4. 4 E. 4. 16. the Gaoler suffer him to escape, he shall have an Action of Debt a-  
 22 E. 4. 67. gainst the Gaoler: Yet he was not committed to Prison at his Suit,  
 7 H. 4. 14. 4 but at the King's Suit. But within the Year after the Condemnation  
 E. 4. 16. 22. and Judgment, the Suit for the King shall serve as well for the Party as  
 Aff. 74. 21 E. the King, because the King was intitled to it by the Party, but after  
 4. 67. 14 H. not: For it shall be intended that the Party is agreed with him who  
 7. 15, 19, 20. is condemned, and therefore after the Year he shall be put to his *Scire*  
 11 H. 4. 44. *facias* upon the Judgment (b).  
 Skrene.  
 (122.)

9 E. 3. 7. (c) If a Man leaseth Lands for Term of Years rendring Rent, and A  
 Debt 149. 19 afterwards the Rent is behind, and the Lessee surrendereth his Term,  
 H. 6. Debt yet the Lessor shall have an Action of Debt for the Arrearages before,  
 143. Vi. 14 as it seemeth by P. 38 E. 3. *tamen quare*, for the Opinion is contrary  
 H. 8. 14 for to 2 H. 6.  
 Waste. 7 H.  
 6. 2.

If a Servant will not do his Service, by the Statute of 24 E. 3. *cap.* B  
 9. he shall be arrested and committed to the Gaol, and if the Gaoler  
 set him at large, he shall lose 10 *l.* to the King, and 5 *l.* to the Party.  
 Now if the Gaoler set such Prisoner at large, the Party who would  
 have him detained, shall have an Action of Debt against the Gaoler.

43 E. 3. 2. If a Man recover Damages in an Action of Waste, he may have an C  
 Action of Debt upon the Recovery, if he will.

3 E. 4. 27. And so a Man may have an Action of Debt upon a Staute Merchant D  
 Quare. 43 E. or Staple, or upon a Recognizance, or may have Execution according  
 3. 2. to the Statute at his Pleasure.

A Prior did recover an Annuity in Fee against a Parson, and after- E  
 wards he sued a *Scire facias* against the Parson, and did recover in the  
*Scire*

(a) See 14 H. 7. 15. 4 E. 4. 16. 36 H.  
 6. 24. 22 Aff. 73. Note; in Debt on Obligation, the Defendant denies his Deed,  
 but found against him; Judgment is given,  
 and he taken by *Capias pro fine*, and the  
 Plaintiff prayed an Elegit. Stoner said, he  
 should make Fine and Discharge; but  
*Green contr.* 17 E. 3. 57. and see a Diver-  
 sity *inter* Debt and Trespafs. 50 E. 3. 4.  
 See 11 H. 7. 15. 13 H. 7. 21. 7 H. 6. 6. 6  
 E. 4. 4. 1 H. 7. 10. 20. 36 H. 6. 33. 7 H.  
 4. 4. and Note the Case here put is *Som-*  
*mers's* Case in Debt on an Escape, where  
 'twas held, that notwithstanding the Taking  
 of the Party *pro Fine*, yet the Plaintiff  
 may pray Execution by Elegit; but yet  
 because the Party-Plaintiff shall be satis-  
 fied his Execution before the King shall  
 be satisfied the Fine, he shall be adjudged  
 to be in Execution for the Party, as well  
 as for the King, so that the Sheriff ought  
 not to dismiss him, altho' the King had  
 pardoned the Fine by Assent of the Party.  
 Also, by the Writ against the Warden,

if he proved by Relation, that he elected  
 him to be in Execution for him *ab initio*.  
 — *Quare* if the King pardons him, and  
 yet the Sheriff detains him, and after-  
 wards he who recovered, sues an Elegit,  
 if the Imprisonment after the Fine be pu-  
 nishable.

(b) But after the Year he may pray  
 that the Party be in Execution for him;  
 so if he be taken *pro Fine* (*ut supra*), in such  
 Case, Action or *Capias* does not lie as in  
 Affise, Redisseisin, &c.

(c) Note; He who surrenders in Fa&,  
 shall have the Emblements. 30 E. 3. 9.  
 that by the Surrender of Parcel, the  
 whole Rent is extinct, per *Monson*. 14 El.  
 Note; Surrender is a good Plea in Bar for  
 Rent incurred after, 9 E. 3. 7. Note; The  
 Case is stronger if it be of a Lease for  
 Lives, and yet such was held Good, but  
 over-ruled for miscounting, *i. e.* not shew-  
 ing the Commencement. 30 E. 3. 10. See  
 14 H. 6. 41. 38 E. 3. 10 *contr.* 19 H. 6. 4.



*Scire facias* the Arrearages of the Annuity, and afterwards he brought an Action of Debt against the Parson upon the Recovery in the *Scire facias* for the Arrearage, and it was maintainable.

- F (a) An Abbot shall be charged in an Action of Debt for Victuals, or other necessary Things bought by the Butler, or other Officer who is deputed to make Purveyance for the Abbey in Time of Vacation. 26 E. 3. 55. Debt 165.
- G (b) If a Man levy Aid of his Tenants for the Marriage of his Daughter, and dieth, the Daughter not married, the Daughter shall have an Action of Debt against the Executors of her Father for the Aid levied; and if the Executors have not any Thing, she shall have an Action of Debt against the Heir for that Aid, if he have any Thing by Descent. 3 E. 3. Itin. North. Fitz. Debt 57. See 82. Lac.
- H (c) If two Coparceners make Partition, and one granteth or promiseth unto the other a certain Sum of Money for the Equality of the Partition, she shall have an Action of Debt upon this Promise, and shall recover the Money. 30 E. 3. Debt 131.
- I (d) If a Man make a Tally, and make Bond thereupon, and seal and deliver it as his Deed, yet it shall not bind him, but he may plead against the same, that he owed him nothing, or wage his Law. For an Obligation ought to be made in Writing in Parchment or Paper, and not written upon any Piece of Wood, as a Tally is. 12 R. 2. Debt 44 E. 3. 21. 44 E. 3. 2. &c. 9 H. 5. 24. If a Man become Debtor for another by Word, it shall not make him Debtor, if not by the Custom of London.
- K And a Man shall have an Action of Debt against him who becometh Pledge for another upon his Promise to pay the Money, without any Writing made thereof, *qd. vi. in Title Pledge acquietand. P.* 43 E. 21.

O o 2

(a) Writ

(a) So for Money borrowed or lent, which came to the Use of the House. 41 E. 1. Debt 127. so if the Commonk makes a Deed, testifying the Debt. 4 E. 2. Debt 168. and See 35 E. 3. 48. 26 E. 3. 55. 7 E. 3. Debt.

(b) See 3 E. 3. Debt 157. it shall be in the Debt against an Heir.

(c) 14 E. 3. Debt 137. Co. Lit. 169. b.

(d) See 2 R. 2. Debt 4. 12 H. 4. 23. 25 E. 3. 40.

(a) *Writ de Rationabili parte Bonorum.*

If the Father hath two Sons, and maketh one of them his Executor. *Quære* if he shall have any Part as Son, because he is Executor, and hath Advance-

**T**HIS Writ lieth where the Wife after the Death of her Husband cannot have the third Part of her Husband's Goods after the Debts are paid, and Funeral Expences performed : For then she may have this Writ against the Executors of her Husband : And it seemeth by the Statute of *Magna Charta*, c. 18. that this was the Common Law of the Realm ; and so it appeareth by *Glanvil*, that it is the Common Law, that after the Debts paid, the Goods shall be divided into three Parts : One Part for the Wife, another Part for Sons and Daughters, and the third unto the Executors ; but yet the Writs in the Register rehearse the Customs of the Counties, and are of this Form.

ment by that. A Woman did demand the Moiety of her Husband's Goods, because he had no Children, and counted upon the Custom of the Realm, 31 E. 3. But 21 H. 6. 1. and 2 seemeth, it is by Custom, and not by the Law of the Land, 7 E. 4. 20. ac. M. 19. and 20 Eliz. in B. R. A Writ was brought and allowed there, notwithstanding that Exception was taken at it, that it was maintainable by special Custom in London. 1 E. 4. 5. Pilling. ac.

30 H. 6. Respond. 95. A Woman brought the Writ for the Moiety, and counted upon the Custom not speaking of any Town, or that it was the Custom of the Realm, 28 H. 6. 4. 40 E. 3. 8. 3 E. 3. Debt 156. Counts by the Custom of the Town of Northampton. 17 E. 99. and 76. and that it is by the Common Law. 7 E. 4. 20. Exception was taken, because he did not count that the Custom did continue.

*Rex Vic', &c. Si A. quæ fuit uxor B. &c. fecerit, &c. tunc sum' C. & D. execut' testamen' prædict' B. qd. sint, &c. ostens. (b) quare cum secund' conf. in com' præd' hæten' obtentam, uxores post mortem viror' suor' habere debeant rationabilem partem suam de bonis & catall' viror' suor' præd'*  
 29 E. 3. 10. *iidem execut' præfat' A. rationabilem partem suam ad valentiam 10. marcar' de bonis & catall' quæ fuer' præd' B. quondam viri sui detinent, minus juste, & ea ei reddere contradicunt, in ipsius A. damnum non modicum & gravamen, & contra consuetud' præd' & habeas ibi sum' & hoc breve, &c.*

2 E. 2. Fitz. And the like Writ the Sons and Daughters may have against the Executors ; and the Form is :

30 E. lb. 52.

And see 31 H. 8. It hath oftentimes been put in Ure at Common Law, and never demurred upon.

*Rex*

(a) *Note* ; This Writ is not *Debet*, but *Detinet*, and so is not within the Stat. 21 Jac. 1. of Limitation of Actions ; adjudged *Trin. 6. Car. 1.* in C. B. *Sherwins's Case*.

See 30 E. 3. 26. That it does not lie against Executors, &c. nor against a Stranger who is possessed of Goods only. 39 E. 3. 9. yet it seems to lie against an Administrator *de bonis nan*, by Custom in

*Suffex*, that where the Father dies seized of Goods, his Heir shall have a reasonable Part. See 7 E. 4. 2. 31 E. 3. 25. 1 E. 2. *Detinue* 56. 31 H. 8. Bro. *rationabil. Part.* 6. 17 E. 3. 9. 17 E. 2. *Detinue* 78. or 58. F. *Detinue* 32. 34 E. 2. *Detinue* 60.

(b) See the Writ *Quare cum secundum Consuetudinem totius Regni Angl. usitat' & approbat'*, &c. adjudged good. 30 E. 3. 26.



Rex, &c. quia A. de N. & S. soror ejus fecerunt nos secur', &c. sum', &c. I. de H. & E. exec' testament' R. de N. qd. sint, &c. ostens. quare cum secund' consuetud' in com' præd' hætenus obtentam & approbatam, pueri post mortem patrum suorum, qui eorum hæred' non sunt (a) nec in vita patrum suorum promoti fuer', hab' debeant rationabiles partes suas de bonis & catall' quæ fuer' patrum suorum, præd' iidem exec' præf. A. de N. & S. post mortem præd' R. patris sui cujus hæred' ipsi non sunt nec qui in vita ejusdem patris sui promoti fuer', rationabiles partes suas ad valenc' decem librar', &c. ut supra.

Marriage is no Advancement, if the Father's Goods be not given in his Life, for Issue was taken thereupon. 3 E. 3. Dett. 155.

*Seçta ad Molendinum.*

**M** *SECTA* ad Molendinum lieth, where a Man by an Usage Time out of Mind, &c. hath used to grind his Corn at the Mill of B. and afterwards he goeth unto another Mill, and (b) withdraweth his Suit from B.'s Mill, then may he have this Writ. And also it seemeth that the Lord may have this Writ against his free Tenants who hold of him to do Suit at his Mill, and yet he may distrain his Tenants for the Suit, and avow for the same.

**A** (c) And by Prescription a Man may have Suit to his Mill, of the Villains of a Stranger, and have *seçtam ad molendinum* against them, and that it seemeth by Reason of their Residence in certain which they dwell upon. And this Writ is sometimes *Vicontiel*, and shall be sued in the County by a Writ of *Justicies*, at the Plaintiff's Pleasure, or in the Common Pleas by a *Præcipe*, &c. and the Form of the Writ in the County is such :

Rex Vic', &c. Præcipimus tibi, quod Justicies A. qd. juste & sine dilatione fac' seçtam suam ad molendinum E. de N. in C. quam ad illud debet & solet, ut dic', sicut rationabiliter monstrare poterit, quod eam ad illud facere debet, ne amplius inde clamorem audiamus pro defectu justitiæ. Teste, &c.

not have this Writ, because it is in the *Debet & Solet*. 20 Eliz. Dyer. Br. Note 127, 128. *Curia Clausenda* lieth for Tenant for Life, and yet the Writ is, *Debet & Solet*.

And

(a) So Note, the Marriage is excluded. (1.) If it be not by her Father. (2.) If she be not promoted. 3 E. 3. Debt 156. See 1 E. 2. Detinue 56, 186. 30 E. 3. 26. 39 E. 3. 9. 40 E. 3. Bro. rationab. Part. 8.

(b) Note in Mich. 3 Car. 1. 'twas held in the Exchequer, that if the King has a Manor by Wardship or otherwise, within which is a Mill, all the Tenants Customary and others within such Manor shall grind their Corn at the said Mill, tho' they are not bound thereto by Tenure or otherwise, viz. during the King's Seisin, and this

by the antient Prerogative of the King.

(c) See 22 H. 6. 14. *Seçta ad Molend.* may be maintained as well by Prescription against the Reliants, as by Tenure against the Tenants.

See 29 E. 3. 12. 17. Note there, the Writ was, that he had suffered 6 Villains of the same Vill, who held 6 Carves, &c. and who ought to grind their Corn growing in the same Lands at his Mill, and shews how much each held, and also shewed Seisin and Explees, and recovered.

And if the Writ be sued in the Common Pleas, the Writ shall be thus :

*Præcip' A. quod juste & sine dilatione faciat sectam ad molendinum E. de N. in C. quam ad illud facere debet & solet, ut dicitur, & nisi fecerit, &c. tunc sum', &c.*

And by the Rule in the Register, a Man shall have a Writ of *Secta*, B &c. *quod faciat sectam ad furnum, & ad thorale, & ad omnia alia hujusmodi.* And Tenant for Life, or in Dower, may maintain this Writ in the *Debet & Solet*, for this is of the Nature of a Writ of the Possession ; But in the *Debet* only, seemeth to be in the meer Right. And the Defendant shall have a View in a *Secta ad molendinum* in the *Debet & Solet* of Land, &c. of the Mill in which the Suit is to be done (a). And the Process in a *Secta ad molendinum* shall be Summons, Attachment, and D Distress, &c. and if he do appear after Default, then shall issue a *Disfringas ad audiendum Judicium*, and yet he may sue his Default (b). E And you may see the Form of the Count in this Writ in the Book of Entries, where he counteth upon a Tenure of Land, &c. and another Count, where he counteth (c) upon Prescription : *Sc.* that the Tenant, and all those which held those Lands, have used to do their Suit at his Mill ; *quod vi. fol. 169.*

### Quod permittat.

**Q**UOD permittat lieth where a Man hath Common of Pasture for his F Cattle, and he is disturbed by a Stranger that he cannot use his Common, then shall he have this Writ : And this Writ may be sued by Justices in the County, or in the Common Pleas ; and the Form of the G Writ is,

27 H. 8. 12.

*Rex Vic', &c. Præcipimus tibi, quod Justicies A. quod juste, &c. permittat B. hæred' communiam pasturæ in N. ad centum oves, &c. vel ad centum boves, &c. quam habere debet, ut dicitur, sicut rationabiliter, &c. ne amplius inde clamorem audiamus. Vel sic : Communiam pasturæ in terra ipsius A. quam in ea habere debet, &c. Vel sic : Quod permittat A. habere Communiam pasturæ in centum acris ipsius A.*

Vi. 2 H. 4.

13. View grantable in this Writ,

3 E. 3. that

the Defendant cannot vouch in a *Quod permittat*, for that it is not a *Præcipe quod reddat*. Vi. 45 E. 3. 8. in the View.

Rex

(a) See 17 E. 3. 29. But not to vouch. 4 E. 3. View 149. 13 E. 3. Voucher 116. yet Aid lies therein, altho' he were seised of the Suit by the Hands of him who prayed Aid. 17 E. 3. 64.

(b) See 12 E. 3. Process 28. 18 E. 3. Judgment 120.

(c) See 17 E. 4. 64. 22 H. 6. 14. 28 E. 3. 12.



Rex Vic', &c. Præc' A. quod iuste, &c. permittat B. habere Communiam pasturæ in N. & 40 acr' bosci, quam habere debet, ut dicit. Et nisi fecerit, & prædict' R. fecerit te, &c. tunc sum', &c.

And another Form of the Writ for Common append. thus :

Rex Vic', &c. Præc' A. quod iuste, &c. permittat B. habere Communiam pasturæ in N. quæ pertinet ad liberum tenement' suum in eadem villa, vel in alia villa, de (a) qua idem A. vel pater præd' A. cujus hæres ipse est, iniuste & sine iudicio disseis. R. patrem præd' B. cujus hæres ipse est, post primam transfretat' Dom' Henr' Regis fil' Reg' Johan' in Vascon' ut dicitur. Et nisi, &c.

Note; This Writ is in the Nature of a Writ of Entry upon a Disseisin made to his Ancestor.

H And the Rule in the Register is, that the Writ of quod permittat lieth of Common of Pasture, Turbary, Piscary, and reasonable Estovers, against a Disseisor of a Disseisin to the Plaintiff of his Ancestors, by him and his Ancestors, and not in other Degrees, because he ought to have a Writ of Right in the Debet & solet.

But an Abbot may have a Writ of Quod permittat of a Disseisin made unto his Predecessor, and shall make Mention of the Disseisin in his Writ.

I And the Form of the Writ de libera (b) piscaria is such :

Rex, &c. Præc' A. &c. quod, &c. permittat B. habere liberam piscariam in aqua ipsius A. in N. Vel sic, in aqua in N. quam in ea habere debet & solet, ut dicit. Et nisi, &c.

K There is another Form of the Writ of Quod permittat, in the Nature of Mortdauncestor, and is such :

Rex, &c. Præc' A. quod, &c. permittat B. habere Com' pastur' in N. in qua C. pater, vel mater, vel soror ipsius B. cujus hæres ipse est, fuit seisit', ut de (c) feodo tanquam pertin' ad liberum tenementum suum in eadem villa die quo obiit, ut dicit. Et nisi, &c.

3 E. 25.  
Quod permittat 1.

L And if it be a Common in grofs, then he ought to put this Clause in the Writ, tanquam pertinens ad liberum tenementum suum, &c.

And so a Parson or an Abbot shall have a Quod permittat of the Seisin of his Predecessor, and the Writ shall say :

Præc', &c. quod permittat B. personam Ecclesiæ de C. habere Com' pasturæ in N. de qua F. quondam persona de C. præd', &c. fuit seisit' ut de jure (d) Ecclesiæ suæ præd' die quo obiit, ut dicit. Et nisi, &c.

31 E. 3.  
Quod permittat. 2.  
30 E. 3. 3.  
Quod permittat. 4.

And the Rule in the Register is, that in the same manner as is said before of Common of Pasture, so it may be said of all other Commons, as of Turbary, Piscary, &c.

A Prebend had the Writ for measuring a Water in the Time of his Predecessor.

M And there are divers other Writs of Quod permittat of another Nature ; as a Man shall have a Quod permittat against the Lord, to suffer his Villains to do Suit to his Mill, &c. and that accrueth by Usage and Prescription ; the Writ is,

Rex

(a) And Note ; it ought to make the Defendant privy to him that did the Tort. 13 E. 3. Brief 676.

(b) Note ; A Precipe does not lie pro Piscaria in Aqua, but pro Piscaria generally, for thereby the Soil it self is to be reco-

vered. Temp. E. 1. Brief 861. 4 E. 3. Feoffment 79.

(c) Ut de feodo, add & de jure. 31 E. 1. Brief 874.

(d) Ut de jure Ecclesiæ, or ut de feodo Ecclesiæ. 31 E. 1. Quod permittat 8.

[124.] Rex, &c. *Præcipe A. quod juse & sine dilatione permittat (a) villa- A*  
*nos suos de C. facere sectam ad molendinum B. &c. in E. &c. Et nisi,*  
*&c. Et prædict' B. fecerit, &c. tunc sum', &c.*

If the Miller taketh Toll, then Trespass lieth : But if the Tenant of the Freehold take it, a Quod permittat.  
 41 E. 3. 24. and 44 E. 3. ac.  
 Vi. E. 1. Br. Battail 13  
 6. Quod permittat 9. a Quod permittat brought of Estovers.  
 And another Writ : *Præcipe A. quod permittat B. molere dominicum bladum suum de N. ad molendinum ipsius A. in N. quietum de multura, quod ad idem molendinum molere debet & solet ut dicit. Et nisi, &c. Vel, Præcipe A. &c. quod permittat B. haurire aquam ad fontem ipsius A. in N. sicut ad illum haurire debet & solet ut dicit : Et nisi, &c. Vel, Quod permittat B. adaquare gregem suum ad aquam ipsius A. in N. sicut illum adaquare debet & solet, ut dicit ; Vel, Quod permittat B. habere liberum taurum suum in N. sicut habere debet & solet, ut dicit ; Vel, Quod permittat B. habere quoddam chiminum ultra terram ipsius A. in N. &c. Vel, Quod permittat B. habere liberam fald' suam in dominicis terris suis in I. quam habere debet & solet. Vel, Quod permittat habere liberam piscariam in aqua ipsius A. in N. &c. Vel, Quod permittat habere liberum passagium ultra aquam de Humbr' in navi ipsius A. quod in ea habere debet & solet ut dicit, &c. & nisi, &c. But a Man shall not have a Quod permittat de rationabilibus estoveriis in bosco, vel in turbaria, vel in bruera, & similibus.*

And the like by the Rule in the Register, for in lieu thereof is given the Writ of Assise of Novel Disseisin by the Statute of West. 2. cap. 26.

And a Man shall have a Writ, *Quod permittat erigere scalas in solo ipsius L. in B. mans. ipsius contiguo pro domibus suis ibidem quoties fuerit opus cooperiend' & reparand' sicut erigere debet & solet, ut dic' & nisi, &c.*

And a Man may have a Writ of *Quod permittat* of a Corrody ; as *Præcipe P. Priori, &c. quod permittat B. habere sustentation' competent' pro se & uno garcione in victu & vestitu & omnibus aliis necessariis, ac pro uno equo in victu singulis diebus, & etiam sustentationem competent' pro quatuor hominibus de com' ejusdem B. quatuor garcionibus, 4 equis, 4 leperariis, & 4 esperveriis singulis An' ad festa Natalis Domini, Pasch' Pent' & omnium Sanctorum, & per 3 dies post quodlibet festor' prædict' in Prioratu de C. &c. de qua E. quondam Prior loci prædict' injuste, &c. diff. F. patrem prædict' B. cujus hæres ipse est post primam transfretationem, &c.*

30 E. 1. Qd. permittat 10. Br. Battail 13.  
 And in a *Quod permittat habere chiminum*, in the Nature of the Writ of Right, and to hold Suit, and dereign the Warrant, &c. the Defendant came and joined the Mife upon the meer Right, and was received.

4 E. 3. 48. Quod permittat 7.  
 (b) And in a *Quod permittat* by a Parson, he counted *de fac' & droit*, B and held Suit, and dereign, &c. and the Tenant came and gaged Battail, &c. *tempore Regis, E. 1.*

And Tenant in Tail shall have a *Quod permittat* (c).

(a) And

(a) See 17 E. 3. 67. 18 E. 3. 56, 57. 29 E. 3. 13. And Note, that in this Writ Esplees are bound in the Multure, and not in the Toll, for that the Mill it self is not in Demand. See 18 E. 3. 57. *si ne Defend Damages Solement.*

(b) 30 E. 1. *Quod permittat* 10.  
 (c) Temp. E. 1. *Quod permittat* 9. 4 E. 3. pl. 39. 4 E. 3. 2. 10 shall a Tenant for Life. 4 Aff. 3.



**C** (a) And in a *Quod permittat* of a Common the Tenant alledged the Darrein Seisin in the Plaintiff, and it was adjudged a good Plea to abate the Writ. But there the Plaintiff counted of the Seisin of his Ancestor: For a Man shall have a *Quod permittat* of his own Seisin, as it seemeth.

**D** And a *Quod permittat ipsum reducer' cursum aquæ*, &c. which is misturned, will well lie.

**E** And a Man shall have a *Quod permittat* against the Tenant of the Freehold for an Act done, or a Disturbance done by a Stranger who was not Tenant of the Soil. 2 H. 4. 13. ac.

**F** And the Process in a *Quod permittat* is Summons, Attachment and Distress: And if the Sheriff at the Summons return *Nilil*, the Plaintiff may pray a (b) *Capias* and have it, *Quod vide H. 39 E. 2.* 30 E. 3.

**G** And the Form of a Count in a *Quod permittat* appears in the Book of Entries, fol. 80 on the first Side.

**H** And if a Man build a House, or a Wall, or other Thing which is a Nuisance unto the Freehold of another, and dieth; he whose Nuisance it is shall have a Writ *Quod permittat* against his Heir that did the Nuisance, and the Writ is such:

*Rex Vic', &c. Præcipe A. quod juste, &c. permittat B. prosterner' quandam domum, vel quandam murum, vel quandam sepem vel quoddam molend' vel fossatum, quem quam vel quod R. pater vel alius antecessor' (c) prædict' A. cujus hæres ipse est, injuste & sine judicio levavit, ad nocumentum liberi tenement' C. patris vel alterius antec' præd' A. cujus hæres ipse est in eadem villa vel in alia, post primam, &c. ut dicit', & nisi fecerit, &c. Vel sic, Quod permittat B. exaltare, vel deexaltare quoddam stagnum in L. quod prædict' A. injuste levavit, vel deexaltavit, ad nocument' liber' tenementi sui vel C. patris prædicti B. &c. Et sic, Quod juste, &c. permittat B. reducere cursum cujusdam aquæ in L. in rectum & antiquum cursum suum, quem C. mater præd' A. cujus hæres ipse est, divertit, ad nocumentum, &c. Vel sic, Quod juste, &c. permittat B. deobstruere quandam viam in N. quod C. pat' præd' A. cujus hæres ipse est injuste obstruxit, &c.*

P p

(a) And

(a) See a *Quod permittat* by Tenant in Tail in the *Debet & Solet*. 4 E. 3. 46. See 4 E. 4. 24. 3 E. 3. 25. and he shall declare on his Case. See 17 E. 3. 67. a *Quod permittat* by Tenant for Life; so 4 Aff. 3.

Of Common, &c. See a *Quod permittat* of Common of Pasture of his own Seisin, it shall bind Esplees, &c. and he tendred Suit, &c. And the Writ was in the *Debet & Solet*. Pole defended it, and joined the Mife or Issue, whether he had the better Right to hold in Severalty, (as he tendred it) or the Demandant to have the Common, &c. and Resolved, (1.) That the Writ being in the *Debet & Solet*, and so a Writ of Possession, that the Mife should not be joined, (2.) That he could

not have a Writ of his own Seisin in the *Debet*; but because the Parties were agreed, that the Mife should stand, the Writ was amended, and *Solet* struck out. T. 16 E. 3.

(b) And after Appearance a *Disfringas* in lieu of a *Petit Cape*, and therefore in a *Quod permittat* against two, they shall not fourch per Distress. 38 E. 3. 1. contr. 14 H. 4. See 30 E. 3. 3. Note; the Party there came in by the *Capias*, and therefore was put to Answer.

(c) Or *Prædecessor*, and therefore if the Writ be general, *ad Nocumentum liberi Tenementi sui*, 'tis a good Plea to say, that it was not done in his Time. 2 H. 4. 13.

(a) And if a Man levy a Nufance unto the Freehold of another, and he to whom the Nufance is done maketh a Feoffment in Fee of the Land ; and he who did the Nufance maketh a Feoffment of the Land in which the Nufance is ; yet there is a Writ in the Register for the Feoffee of him to whom the Nufance was levied against the Feoffee of the other, to reform that Nufance, and the Writ is such :

*Rex Vic', &c. Præcipe C. quod juste, &c. permittat B. dearttar' quandam viam in N. quam C. injuste & sine judicio arctavit, &c.*

[125.]  
Or Bailiw.  
34 E. 1. Br.  
Demand 43.

But this Writ is not given by the Statute, but may sue, &c. by the Statute *West. 2. in Casu consimili, &c. c. 2, 4.*

And a *Quod permittat* of a Fair or Market shall be sued in the Common A Pleas ; and the Writ is such :

*Rex Vic', &c. Si A. fecerit, &c. tunc sum' B. &c. quod sit coram Justic' nostris ostens. quare levavit quoddam Mercatum, vel quandam Feriam in I. ad nocumentum liberi mercati, vel libera Feriæ ipsius A. in eadem villa, vel in alia post primam, &c. ut dicit. Et habeas ibi summon', &c.*

And the like Writ for the Heir, where the Father doth levy the Market or Fair unto the Nufance of another Fair or Market ; or for the Heir against him who levieth the Nufance, &c.

### Writ of Admeasurement of Pasture.

THE Writ of Admeasurement of Pasture lieth betwixt Commoners B who have Common appendant to their Freeholds, if one of them furcharge the Common by putting in more Cattle in the Common, than he (b) ought to have Common for there, then that Commoner who is grieved shall have this Writ of Admeasurement of Pasture ; and by this Suit all the Commoners shall be admeasured, as well those who have not furcharged the Common, as he who hath furcharged it, and he who bringeth the Action shall be also admeasured.

8 H. 6. 26.  
Ant. 125.

(a) And

(a) So is *Penruddock's Case*. 5 Co. after a Request to abate it. See 4 Aff. 3. 4 E. 3. 36. 5 E. 3. 43. The Father erects a Lime-Kiln, which is a Nufance to B. and after discontinues the Use thereof, and then B. makes a Lease for Life ; then the Father uses the Lime-Kiln and dies, and the Son does not abate it on Request ; a *Quod permittat* lies against him : But if the Father had levied it before the Lease, and had from Time to Time used it during the Lease, then it had been otherwise. Note ; The Writ there was, *quod Pater levavit ad nocumentum liberi Ten'ti sui*. The Defendant says, that he had a there, and used it before the Lease, &c.

It seems by the Statute, it shall be brought against him that did the Tort, and

the Tertenants after the Alienation. *West. 2. c. 24.* also it lies for a Successor ; and note ; in such Case the Alienee may have Aid of him in the Reversion or Remainder. *Quare* 30 E. 3. 26. 4 Aff. 3. Reg. 194.

(b) Note ; If A. grants to B. Common for one Thousand Cattle in four Carves, and after grants to C. Common in the same Land for one Hundred Beasts ; if by the second Grant the Beasts of the first Grantee cannot have sufficient, the second Grant is void against B. 18 H. 6. 30. Note ; The Writ shall be brought against him only who furcharges ; and in this Writ all shall be admeasured, but not so their Prejudice, seeing they are not Parties to the Suit. 8 H. 6. 26.



C (a) And the Writ is *Vicontiel*, and shall be directed unto the Sheriff, and shall not be returnable; and the Form of the Writ is such:

*Rex Vic', &c. Questus est nobis A. quod B. & C. uxor ejus injuste superoneraverunt communiam pasturæ sue in N. ita quod in ea plura habent animalia & pecora quam habere debent & ad ipsos pertinet habendum. Et ideo tibi præcipimus, quod juste & sine dilatione admens. fac' pasturam illam, ita quod prædict' B. & C. non habeant in ea plura animalia & pecora quam habere debent, & ad ipsos pertinet habendum, secundum liberum tenementum suum, quod habent in eadem villa. Et quod prædict' A. habeat in pastura illa tot animalia & pecora quot habere debet, & ad ipsum pertinet habend', ne amplius inde clam' audiamus.*

D (b) And if the Tenant surcharge the Common with his Cattle, &c. the Lord shall not have the Writ of Admeasurement against the Tenant; but it seemeth the Lord may distrain the Surplusage of the Cattle Damage-feasant. And some say, that the Lord may have an Assise against the Tenant for the Surcharge, for that he is disturbed of the Profit of his Land. *Quær.* of these Cases (c).

But if the Lord surcharge the Common, the Tenant shall not have a Writ of Admeasurement against the Lord, but he shall have an Assise of Common against the Lord.

View in the Action 3. H. 6. 26. Voucher; also 32 E. 3. Voucher 194.

Note, this Writ is *Vicontiel*, and the Statutes are the Judges by 7 E. 4. 23. 18 E. 3. Admeasurement 7. a notable Case.

18 E. 2. 20.

P p 2

And

(a) Admeasurement seems not to lie for Common appendant, or for Common by Specialty *sans* Number; but for him who has Common appurtenant, or a certain Common by Grant or Specialty if he surcharge. 22 Aff. 55.

(b) He cannot distrain the Surplus, where the Tenant has Common appendant, 'till it be admeasured. 10 E. 3. 51. 18 E. 3. Admeasurement 7. *per Cur'*, and yet he may approve it.

Note; The Lord may have an Admeasurement; but he himself shall not admeasure. *Temp. E. 1. Admeasurement 12.* See 6 Co. 54. *Corbet's Case*.

(c) See *Braff.* 229. That the Lord may have Admeasurement against his Tenant, or *e converso* for a Commoner against the Lord. *Temp. E. 1. Admeasurement 16.* Not against the Lord, because he cannot approve, but against the Tenant who is not Lord. *Ibid.* 11. 18 E. 3. 80. *Admeasurement 7.* If there are two Neighbours in a Vill, who intercommon each in the other's Land, Admeasurement does not lie between them; but if there are three Neighbours A. B. and C. and each intercommons in the other's Land; if one of them surcharge, the whole Admeasurement lies, for he had Common in the Lands of the three, &c. But where there are only two Neighbours A. and B. Admeasurement does not lie, for

there on a Surcharge, the Remedy is by Assise as Tertenant, and not as a Commoner; and a Tertenant cannot be admeasured; but where there are three Commoners or more who intercommon, each shall be admeasured in the Lands of the other. 18 E. 3. 43, 30. *Admeasurement*, when against Tenant of the Soil. *ibid.* 4. See 18 E. 3. *Admeasurement 7.* 19 E. 3. 30.

Note; The Writ of Admeasurement lies, though the Plaintiff has disseised the Tenant of the Common, if he continues seised of the Land to which. 8 E. 2. *Admeasurement 14.* And if the Defendant has Common appendant to his Freehold in three Villis, it may be admeasured for the Lands in one of the Villis. *Temp. E. 1. ibid.* 15. Note there, if one has Common appendant, and the Lord of the Soil grants him Common there for two Hundred Beasts more, whereby the Common is surcharged; Admeasurement lies against him, and he shall admeasure within the Number granted him, and shall be put to vouch his Grantor to Warranty. *Temp. E. 1. ibid.* 16. and *Brief* 862. See 22 Aff. 65. *Admeasurement 11.*

Note; If the Lord leave sufficient Common, but the Way is not at so good Ease or Plight as it was before, Assise of Common lies, by *Stourt.* 11 H. 4. 26.

See 179. E.  
126 D. E.

And so if the Lord do make Approvement of the Common unto himself, and do not leave sufficient Common to the Tenant, the Tenant shall have an Assise, and not a Writ of Admeasurement. And he who hath Common apurtenant certain, or Common by Grant certain, shall be admeasured; and a Tenant shall have an Admeasurement against him; but he who hath a Common appurtenant without Number, or Common in gross without Number, shall not be stinted, nor a Writ of Admeasurement doth not lie against him.

And in the Time of E. 1. it was agreed, That one Neighbour shall have a Writ of Admeasurement against another, where they intercommon by Reason of Neighbourhood.

And if the Sheriff will not make the Admeasurement, he shall have *F* an *Alias* and *Pluries*, *vel causam Nobis significes*. And if he do not return the *Pluries*, he shall have an Attachment against the Sheriff. And the Plea may be removed out of the County by a *Pone*, at the Suit of the Plaintiff, without shewing Cause in the Writ. But at the Suit of the Defendant he ought to shew Cause in the Writ; and the Writ of *Pone* is such:

*Pone ad petitionem petentis coram Justic', &c. tali die loquelam quæ est in Com' tuo per breve nostrum inter A. & B. de Com' pastura in N. admensur' & sum', &c. prædict' B. quod tunc sit ibi præf. A. inde responsurus, &c. & habeas, &c. hoc brev', & aliud breve.*

7 E. 4. 22.  
Danby.

And upon this Writ of Admeasurement the Plaintiff shall enter his Plaint *G* into the County before the Sheriff, as he shall do in a Replevin sued by Writ, and upon that the Sheriff shall make a Warrant against the Defendant, &c. and warn him to appear; and if he come and plead nothing in Bar, or grant it, then the Sheriff shall make the Admeasurement.

In a Writ of Admeasurement brought against one of Common in D. the Defendant said that he had Lands in B. and S. to which he had Common in the same Place, and yet the Writ good; for it is holden there that the Ouster of the Surcharge shall not be in the same Place only, yet it seemeth all the Common shall be admeasured. *Temp. E. 1. Admeasf. 15.*

But if the Defendant shew Cause unto the Sheriff wherefore the Admeasurement should not be made, then the Sheriff ought not to make Admeasurement upon this Writ; but the Plaintiff ought to remove the Plea by a *Pone* into the Common Pleas, by which *Pone* the Defendant shall have Day for to appear, &c. And if he appear not, then shall issue a *Distringas* directed to the Sheriff to distrain the Party, and such Day shall be given by that Writ, that two Counties may be kept between the Date of the Writ and the Return, and in the Counties Proclamation shall be made, that he come and shew Cause why the Admeasurement should not be made. And if he do not come at the Return of the *Distringas*, then a Writ shall be awarded unto the Sheriff, to make the Admeasurement by his Default; and that is given by the Statute of *West. 2. cap. 8.* and the Writ is,

*Rex Vic', &c. Cum A. nuper nobis quesitus est quod B. & C. injuste super-* *H*  
*encraver' communiam pasturæ suæ in N. ita quod in ea plura habent anima-*  
*lia*



*lia* & pecora quam habere debent & ad ipsos pertinet habendum: Per quod tibi præcipimus, quod iuste & sine dilatione admensurari fac' pasturam illam, ita quod prædict' B. & C. non habeant in ea plura animalia & pecora quam habere debent, & ad ipsos pertinet habendum secundum liberum tenement' suum in eadem villa. Et quod prædict' A. habeat in pastura illa tot animalia & pecor' quot habere debet, & ad ipsum pertinet habend', &c. ne amplius, &c. ac tu (a) nihil inde feceris sicut ex querela ipsius A. accepimus: Cumque in brevi nostro de admensurat' pastur' statuerimus quod post magn' distinction' dentur dies infra quos duo Com' teneant' ad quos proclametur, quod reus veniat aëtori respondere; ad quem diem si non venerit, fiat admensur' per defaultam; Tibi præcipimus, sicut alias tibi præceper' quod iust' & sine dilatione admensur' fac' pastur' antedict' juxta tenorem alterius brevis nostri tibi inde directi, & juxta form' statut' nostri inde provis. & edit' ne per præf. A. oporteat nos super hoc iteratum sollicitari. Teste, &c.

[126.]

**A** And when the Plea is removed by *Pone* in the Common Pleas, and the Plaintiff appears and the Defendant, then the Plaintiff shall count against the Defendant; and see the Form of the Count in the Book of Entries, fol. 128.

**B** And if the Defendant do grant to have the Admeasurement, a Writ shall issue out to the Sheriff to make Admeasurement, which shall be such:

*Rex Vic', &c. Præcipimus tibi, quod assumptis tecum 12, &c. per quos, &c. qui nec, &c. in propria persona tua accedas ad communiam pasture admensurandum & per eorum sacrament' admensurandum fac' communiam pasture prædict' ita quod prædict' S. & C. def. non habeant plura, &c. & ad ipsos pertinet non habend' secund' liberum tenementum suum, quod habent in eadem villa. Et quod prædict' R. habeat in pastura illa tot animalia & pecora, quot habere debet, & ad ipsum pertinet habere secund' liberum tenementum suum, quod habet in eadem villa, & admensurat' quam, &c. scire facias coram Justic' nostris, &c. sub sigillo tuo, & sigillis eorum, &c.*

**C** After the *Pone* returned to remove the Plea out of the County, if the Defendant make Default at the Day of the Return of the Writ, then shall issue a Writ to the Sheriff to distrain the Defendant, and in the Writ shall be contained that he make open Proclamation in two Counties, &c. that the Defendant come into the Common Pleas at the Day of the Return of the *Distringas*, to answer to the Plaintiff, &c. And if the Sheriff return the Writ served, and the Defendant doth not come, then shall issue a Writ to the Sheriff to make the Admeasurement.

**D** And it appeareth by the Book of Entries, fol. 123. That a Writ of Admeasurement doth not lie against the Lord of the Soil (b).

And

(a) Note; Though *nihil* be returned to each of the three Writs, yet by the Statute they shall proceed to the Admeasurement.

(b) See 2 H. 6. 41. And there some hold that the Defendant shall have Admeasurement. See 8 H. 6. 27. 9 H. 6. 41. 2 Inf. 83.

18 E. 3. 20.  
Admeasure-  
ment 7. ac,  
and there  
holden that  
it lieth not  
against the

Fee of the Lord of Part of the Demesnes, so that the Feoffee is in the same Degree as the Lord himself. 8 E. 2. *Admeasurement* 14. In Admeasurement of Pasture the Defendant said that the Demandant pendant the Writ, had ejected him of the Common, and no Plea; for notwithstanding that he had not the Common, he held the Land for which the Common is surcharged.

*Rex Vic', &c. Monstravit nobis A. quod cum ipse breve nostrum nuper tibi detulisset de communia pasture sue in N. admensuranda quam B. injuste superoneravit; Et tu pastur' ill' per preceptum nostrum, prout moris est in regno nostro admens'. &c. idem B. pasturam illam post admensur' predict' injuste superoner' in ipsius A. dispend' non modicum & gravamen, & contra formam stat' nostri super hoc provis'. Et quia eidem A. juxta formam ejusdem statut' subvenire volumus, ut tenemur, Tibi precipimus, quod tu in propria persona tua accedas ad pasturam illam, & per sacramentum proborum & legalium hominum de balliva tua, per quos rei veritas melius sciri poterit, de secunda superoneratione ejusdem pasture diligenter inquir'. Et si per inquisitionem illam pasturam ill' per pras. B. post admens'. iterum injuste superonerat' inveneris, tunc de averiis illis pastur' ill' ultra debit' numer' post primam admens'. positis, vel de pretio illor' nobis respondeas ad Scaccarium, & superoneration' amoveas sup'. Teste, &c.*

And it appeareth by this Writ, that a Man shall have a Writ *De Superoneratione* upon the first Writ of Admeasurement of Pasture, which is *Vicontiel* and directed to the Sheriff, if the Sheriff make Admeasurement upon that Writ, and afterwards the Defendant surcharge the Common again, as well as upon a Writ of Admeasurement awarded out of the Common Pleas upon a Judgment there given, &c. But upon the Writ of Admeasurement awarded to the Sheriff, by which he maketh Admeasurement, if the Defendant surcharge the Common after, the Writ of *Secund' Superoneratione* shall be awarded out of the Chancery: But upon a Judgment given in the Common Pleas of Admeasurement, &c. if the Defendant surcharge the Common, the Writ of *Secunda Superoneratione* shall be awarded out of the Common Pleas; and the Form of the Count in a Writ of Admeasurement is such:

*Et unde predict' querens queritur, quod cum ipse seisit' sit de uno messuag' cum pertin' in S. ad quod idem querens habet & habere debet communiam pasture cum quatuor equis, in centum acris pastur' vocat' B. quolibet ann' per totum annum pertin. Et predict' def. seisit' existit in dominico suo ut de feod' de quatuor virgat' terre, cum pertin' in eadem villa, ad quas idem defend' habet & habere debet communiam pasture cum centum equis, & 20 bobus, &c. quolibet ann' per totum annum pertin' predict' defend' injuste superoneravit commun' pastur' predict' vocat' B. ita quod in ea plura habet animalia & pecora quam habere debet, & ad ipsum pertinet habere, unde dicit quod deteriorat' est, & damnum habet ad 20 li' & petit admensur'.*

And



**H** And by the Writ of *Secunda Superoneratione* the Plaintiff shall recover his Damages against him that was Defendant in the first Writ, and also he shall forfeit unto the King the Cattle which he put in over the due Number after the Admeasurement made. And all this is by the Statute of *West. 2. Vide ant. 125.*

**I** (a) And note; That by the Writ of Admeasurement all the Commoners shall be admeasured as well as those who were Parties to the Writ. But yet if any of those who are Commoners, which were not Parties to the Writs of Admeasurement, &c. do surcharge the Common after Admeasurement, they shall not forfeit their Cattle, nor the Value of them that were in the Pasture above the due Number, because they were not Parties to the first Writ, nor the Party shall recover Damages against them for this Surcharge in this Writ. For the Writ of *Secunda Superoneratione* doth not lie but only against him, against whom the first Writ was sued forth. [127.]

*Writ de Reparatione facienda.*

**A** **T**HE Writ de *Reparatione facienda* lieth in divers Cases; one is, 11 Co. 82. b. where there are three Tenants in Common or Joint, or *pro indiviso* of a Mill or a House, &c. which falls to Decay, and one will repair, but the other will not repair the same, he shall have this Writ against them; and the Writ is such:

**B** *Rex Vic', &c. Si A. fecerit, &c. tunc sum', &c. B. & C. quod sint, &c. offensur' quare cum iidem A. B. & C. quoddam molendinum in N. pro indivis. teneant, & ipsi exitus inde provenientes pro equali portione inde percipiant, & ad reparationem & sustent' ejusdem molendini teneant', ac iidem B. & C. licet portionem de exitibus illis ipsos contingent' percipiant, reparationi tamen & sustentationi predicti molendini contribuere contrad' in ipsius A. dampn' non modicum & gravamen ut dicit, & habeas ibi sum', &c.*

**C** And so if a Man have a House adjoining to my House, and he suffer his House to lie in Decay, to the Annoyance of my House; I shall have a Writ against him to repair his House in such Form:

*Præcipe A. quod, &c. reparari fac' quandam domum suam in N. quæ minatur ruinam ad nocumentum liberi tenementi B. in eadem villa, quæ reparari debet & solet, ut dicit, &c. & nisi, &c.* 11 H. 4. 83.

**D** And so if I have a Passage over a Bridge, and another ought to repair the Bridge, and he suffer the same to fall to Decay, I shall have a Writ against him in this Form:

*Rex, &c. Præcipe A. quod, &c. reparari faciat una cum B. & C. participibus suis pontem vel quoddam stagnum in N. quem vel quod cum eis reparare debet ut dicit, & nisi, &c. vel sic, quendam pontem, vel quoddam stagnum, qui*

(a) But note; The Judgment on the Admeasurement, is only to extend between the Parties; for if any other be aggrieved, he ought to bring a new Admeasurement. 18 E. 3. Admeasurement 7.

*qui vel quod dirut' vel dirupt' est, ad nocument' (a) liberi tenem' B. in eadem villa, quem vel quod facere debet & solet, &c. ut dicit; vel sic, reparari fac' cum B. & C. participibus suis fossata & wallias in N. quæ diruta sunt ad nocumentum liberi tenementi B. & C. quas vel quæ cum eis reparare debet & solet ut dicit, &c.*

And if any Bridge, Wall, or Sewer be broken, unto the Annoyance of **E** the Country, upon a Surmise made by any Person thereof in Chancery, that certain Persons ought to repair the same, he shall have a Writ unto the Sheriff to distrain such Persons to repair the same; but it appeareth (b) by the Register, that the King shall send his Commission to the Sheriff to enquire who ought to make such Bridge, and that he distrain them to make the same, and repair it. But by the Statute of 28 E. 3. cap. 9. (c) a Commission shall not be made unto the Sheriff to take an Indictment; and the King may send unto the Sheriff to distrain those Persons who ought to make or repair such a Way, or Causeway, or Pavement, and upon it an *Alias* and *Pluries* if it be not done, and an Attachment upon the same; and if the Bridge or Way be in the Confines of the County, he shall have several Writs unto every Sheriff to distrain them in their Bailiwicks, that they, with the Men in other Counties, shall make and repair the Bridges and Ways, &c.

And there is another Writ in the Register in the Title of the Writ of **F** *Ex gravi querela*, thus:

*Rex Majori & Vic' de A. salutem. Ex parte W nobis est ostensum quod cum ipse habeat quoddam selarium cum pertin' in vicaria villa de A. ac I. habeat quoddam selarium cum pertin' in eadem villa super selarium prædictum dirutum & confract', ad nocumentum selarij ipsius W. & per præf. I. secundum consuetudinem villæ prædictæ reparari debeat, idem tamen I. selarium illud reparare contradicit, prout dicit', ad grave damnum ipsius W. & contra consuetudinem prædictam: Et quia volumus, quod idem W. injuriatur in hac parte, Vobis præcipimus, quod vocatis coram vobis partibus præd' auditisque hinc inde eorum rationibus, eidem W. in præmissis fieri fac' debitum & justitiam justitiæ complementum, prout de jure & secundum consuet', &c.*

And thereupon the Mayor and Sheriffs, or Bailiffs shall proceed, and award Process against the Parties; and if they will not do it, he may have an *Alias* and *Pluries*, and Attachment against the Mayor and Bailiffs.

*Writ*

(a) And note; in this Writ the Party recovers his Damages, and it shall be awarded that the Defendant repair, and that he be distrained to do it. 18 E. 3. 23. So in this Writ he shall have the View; *contra* if it be but an Action on the Case for not repairing, for there he shall recover but Damages. 7 H. 4. 8.

(b) On a Commission an Inquest was

found (and returned into Chancery, and sent thence into B. C.) that the Abbot of W. and his Predecessors, had repaired the Bridge of S.

(c) Note; It seems such Commissions were principally to redress Nuisances which were within the Precincts of Franchises, or Leets of other Lords, and so not punishable in the Sheriff's Turn. 29 E. 3. 21.



## *Writ de Curia claudenda, and for repairing of Hedges.*

**G** THE Writ of *Curia claudenda* may be sued before the Sheriff in the (a) County, and then the Writ is such:

*Rex Vic', &c. Justicies A. quod juste, &c. claud' curiam suam in N. quæ aperta est ad nocumentum liberi tenementi B. in eadem villa, vel in alia villa, quam claudere debet & solet ut dicit' sicut rationabiliter monstrare poterit, quam eam claudere debeat, ne amplius, &c.*

**H** And this Writ lieth where one ought for to inclose his Land from his Neighbour, and will not do it, he shall have this Writ; and the Writ may be sued in the Common Pleas, and then the Writ is such (b):

**I** *Rex, &c. Præcipe A. quod juste, &c. claudat Curiam suam in N. quæ aperta est, ad nocumentum liberi tenement', (usque ibi) &c. debet & solet. Et nisi, &c. (c)*

shall have this Writ before he be damnified. *Quia timet.* 27 H. 6. *Curia claud'.* A Nontenure is a good Plea in the Writ.

**A** And this Writ shall be removed out of the County at the Suit of the Plaintiff without Cause, and at the Suit of the Defendant he ought to shew Cause in the Writ, and in the End of the Writ shall be this Clause: *Fiat executio brevis, &c. si causa sit vera, aliter non.*

**B** And the *Curia claudenda* doth not lie but against him who (d) hath a Close adjoining unto the Plaintiff's Land, and it doth not lie but for him who hath a Freehold in the Land, for Tenant for Years shall have this Writ, and the View lieth in this Writ (e).

**C** But it seemeth that if a Man have Common in a great Waste to him and his Heirs, or for Life, and he who hath the Land adjoining unto the Waste and Soil, and who ought to enclose, enter into the Waste, and will not make this Enclosure; yet the Commoner shall not have this Action for the Damages which he sustaineth, &c. although the Commoner may distrain the Cattle Damage-feasant in the Land which is his Common, for the Writ doth suppose, *Ad Nocumentum liberi tent'*

Q q

of

(a) Note; A *Curia claudenda* shall be brought only in the County where the Lands which ought to be inclosed lie, per *Skipw.* But Cause shall be brought in that County which is damaged by the Noninclosure; and if Issue be on the Prescription, the Venue shall come *de utroq'* Comitatu, per *Skipw.* 11 R. 2. *Action sur le Case* 36. &c. and see there Cause for an Inclosure; and note, the Writ was *ad Nocumentum.* 29 E. 3. 20.

(b) See 2 R. 2. *Action sur le Case* 36.

(c) See 22 E. 4. *Curia claud'* 2. 1 H. 6. 33. 7 H. 6. pl. 4. 17 H. 6. pl. 4.

(d) Note; The Count supposes that the Lands of the Plaintiff are contiguously adjacent to the Close of the Defendant, and this is issuable, for none shall have this Writ, but he who has the Land next adjoining, by *Newton.* 22 H. 6, 8, and 9. and *Moyle contr' Prifot.* See 13 H. 7. *Kelw.* 130. 7 H. 6. *Cur' claud'* 4. 13 R. 2. pl. 3. 17 H. 6. pl. 4.

(e) Both for the one and the other's Lands, &c. 29 E. 3. 21.

11 R. 2. *Curia claudenda,*  
5. L. 5 E. 3.  
100. It ought  
to be in the  
Deb. and So-  
let, and the  
Tenant for  
Life shall  
have the Writ.  
2 H. 4. 11. L.  
5 E. 4. 118,  
119. a Man

[128.]  
16 H. 7. 9.  
per *Finew*  
the Judgment  
is to recover  
the Inclosure  
and Damages.  
22 H. 6. 7, 8.  
22 E. 4. *Cur'*  
*claud'.*  
39 E. 6. *ib. ac.*  
13 R. 2. *Cur'*  
*claud.* 3.  
12 H. 8. 2.  
24 E. 3. 4.  
15 H. 7. 13.  
5 H. 7. 2.  
22 H. 6. 9.

of the Plaintiff, which proveth that the Plaintiff ought to have the Soil adjoining, if he have the Action (a).

And

(b) *Note* ; If *A.* be bound to inclose against *B.* and *B.* against *C.* and Beasts Escape out of the Land of *C.* into the Land of *B.* and thence into the Land of *A.* *A.* shall not have Trespass against *C.* But if *A.* be bound to inclose against *B.* and the Beasts of *B.* escape into the Lands of *A.* and thence into the Land of one *D.* a Stranger, there *D.* shall have Trespass, and *B.* be put to a *Curia claudenda* against *A.* and so the Books 10 *E.* 2. 7. and 36 *H.* 6. *Barr.* 68. are to be reconciled : but it is otherwise if Beasts escape in View of the Owner, by Default of Inclosure, as out of a Highway, &c. and fresh Suit be shewn in Justification ; but if it does not appear they were in View of the Owner, fresh Suit shall not be pleaded in Bar, except the Plaintiff alleges Notice. 15 *H.* 7. 17. 22 *E.* 4. 8, 49. 10 *E.* 4. 8.

*Note as to Inclosure.*

(1.) If Beasts escape into your Land for Default of Inclosure, where you are bound to inclose, you shall have no Advantage thereof on the general Issue, but ought to plead in special. 18 *H.* 8. 6.

(2.) See the Form of the Plea ; *Actio non quia dicit quod diu antea, &c. ipse fuit seiscitus de quodam Clauso. in S. predict' vocat' D. pred' Clauso de C. in quo supponitur Transgressio predict' contigue adjacen' in Dominico suo ut de Feodo, Quodque predict' A. & omnes ill' quor' Statu' ipse habet in Clauso vocat' D. predict' a tempore quo, &c. usi fuerunt Clauso predict' claudere, & sepes de eo Clauso vers. Clausum in suis G. sufficienter reparare & emendare, quodq' ante, &c. idem G. averia sua in predicto Clauso suo posuit ad depascend', & quia sepes inter Clausum predicti A. vers. Clausum predicti G. fuer' fracta & minime reparata predicta averia ab eodem clauso ipsius G. in defectu sufficien' Reparation' Clausi predict' tempore quo intraver', &c. Et hoc, &c.* *Raft. Entr.* 621. And see the same Form of Pleading, int' *Sagevill* and *Millard* for a Trespass in the Park of *Cheeny*, where the Plaintiff replied, That he is seised of a Piece of Land of seven Feet in *Longitudine* (*Latitud'*) & 20 verge in *Latitudine* (*Longitud'*) lying between the Lands of the said *G.* and those of *C.* and that the Beasts on the Day of the Trespass, came into his said Piece of Land, and there broke the said Close, &c. *absque hoc*, that the Defen-

dant's Close is contiguously adjacent to the Close of *C. modo & forma.* And the other Party said, *it was*, &c. and it was found for the Plaintiff, and 20 *l.* Damages for the Piece of Land, and 40 *s.* for the Close ; and it was adjudged that the Plaintiff should recover.

*Note* ; It is a good Issue to traverse the Prescription ; for if the Plaintiff be not bound to inclose (though he has voluntarily inclosed) it will be to no Purpose ; for if *A.* and *B.* have Lands adjoining, where there is no Inclosure, the one shall have Trespass against the other, on an Escape of their Beasts respectively. *Dyer* 372. *Raft. Entr.* 621. 25 *E.* 4. 10. although wild Dogs, &c. drive the Cattel of the one into the Lands of the other ; and 22 *H.* 6. 9. and the Writ shall be *Quare clausum fregit*, for it is a Close in Law.

(2.) If the Defendant pleads that he is seised in his Demesne, as of Fee of the Close of *D.* the Plaintiff may reply, that *J. S.* was seised, *absque hoc*, that the Defendant was seised in his Demesne as of Fee, and so cause the precise Estate to come in Question : But if the Defendant had pleaded generally, that he was seised of the Close adjoining, or that the Close adjoining was his Freehold ; there the Plaintiff shall reply, that he had nothing in the Close adjoining at the Time, &c. and this shall make the Issue. *Dyer* 365. *Sir Fra. Leake's Case.*

(3.) That *ex consequenti* it follows, none can have Advantage of this Justification, but he who claims an Interest in the Land adjoining to *D. viz.* a Common Path, Highway, License, Lease, &c. and therefore if *A.* be bound to inclose with *B.* who has a Close adjoining, and the Beasts of *C.* who has another Close adjoining, escape into the Land of *B.* and thence into the Land of *A.* *A.* shall have Trespass for this ; and so held by *Newton.* 21 *H.* 6. 53. 22 *H.* 6. 9. for they were Trespassers to *B.* otherwise if *C.* had had Common, or a Way in the Land of *B.* or (as it seems to me) if *B.* had been bound to inclose against *C.* 22 *E.* 4. *Curia claudenda* 2. adjudged.

(4.) Hence it follows, that the Issue is well joined in the principal Case ; for the Defendant had not the Close immediate ; so his Beasts did Wrong, when they entered into the Piece of Land out of the Park ;

and



**D** And the Proceſs in this Writ is Summons, Attachment and Diſtreſs, and if he do appear and afterwards make Default, he ſhall have a *Diſtringas* in the Place of a *Petit Cape*, &c. And if he make Default at the Day of the Return of that Writ, he ſhall have a Writ to enquire of Damages, and alſo a Writ to diſtrain him to make the Reparations, &c. And in this Writ in his Count he ought to ſhew the Certainty of the Land which the Plaintiff hath adjoining unto the Defendant, and the Certainty of the Land which the Defendant hath there adjoining which he ought to encloſe. And to alledge a Preſcription of the Encloſure, &c. as appeareth in the Count of the Book of Entries, fol. 32. So it is holden 22 H. 6. for if it be by Indenture or Composition, then he ſhall be put to his Writ of Covenant.

22 E. 4. Iſſue  
127. 10 E. 4.  
7. 13 R. 2.  
Cur' claud' 3.  
29 H. 6.  
38 Dyer.

Writ of Quo Jure.

**T**HE Writ of Quo Jure, where a Man hath Lands in Fee, and another claimeth Common in that Land, he who owneth that Land ſhall have this Writ againſt that Commoner who claimeth the Common, and the Writ is ſuch :

7 H. 4. 12. It  
is a good  
Plea to ſay

that he hath nothing in the Lands in which he claimeth Common.

**G** Rex Vic', &c. Si A. fecerit, &c. tunc ſum', &c. B. quod ſit, &c. oſtenſ. quo jure exigit, &c. communiam paſturae in terra ipſius A. ſicut idem A. null' habet communiam in terra ipſius B. (a) nec idem B. ſervitium faciat quare communiam in terra ipſius A. habere debet, ut dicit, & habeas inde, &c.

**H** And this Writ lieth for the Lord of a Town, or of a Waſte, or for any other Tenant who claimeth Common in his Land; altho' he be not Lord of the Waſte, nor the Town.

**I** And this Writ is a Writ of Right in its Nature, for when the Plaintiff hath declared in this Writ, the Tenant ſhall make Defence and ſet out his Title to the Common, (b) and alledge Seiſin thereof, and the Eſplees, Et quod tale ſit jus ſuum offert, &c. as the Demandant ſhall do in a Writ of Right; and then the Plaintiff in the Quo Jure ſhall make Defence, and deny the Seiſin alledged by the Defendant, and join the Miſe upon the meer Right, or by Battail, and ſee the Count and the Form of Pleading in a Quo jure. Lib. Ent. 96. and 80.

Q q 2

And

and therefore, if A. be bound to incloſe againſt B. who has twenty Acres adjoining, and A purchaſes one Acre contiguouſly adjacent to the Incloſure, A. ſhall not be compelled to incloſe. If A. has a Cloſe which he uſed to incloſe, and afterwards has an Acre of Land contiguouſly adjoining, and then lets out his Incloſure, with Limits, &c. Yet he that has the Land adjoining, ſhall not juſtify for Default of In-

cloſure. Theſe Points are reſolved, 21 H. 6. 3. 22 H. 6. 8.

(a) Yet note; A Lord may have Common appendant to his Demefnes in the Lands of his Tenant. 18 E. 3. 43.

(b) So that herein the Defendant is Actor or Proſecutor, and therefore it is held by ſome, that he ſhall not have Aid on his Title. 9 H. 6. 56.

And in a *Quo jure* brought by two, Summons and Severance lieth, and K the Nonfuit of the one shall not be the Nonfuit of the other. And this *Quo jure* lieth against several Tenants, as it appeareth, *H. 24 H. 3.* But in that Case they shall, it seemeth, make several Defences, and make several Titles, and join the *Mise* severally. And the View shall be granted in this Writ. And the Proceſs in this Writ is Summons, Attachment and Distress, and after Appearance if the Defendant make L Default, a grand Distress shall issue out in the Place of *Petit Cape*, &c.

Post. 133.

*Writ de Rationabilibus Divisis.*

THE Writ *de Rationabilibus Divisis*, is in its Nature a Writ of M Right; and lieth properly where two Men have Lands in divers Towns or Hamlets, so that the one is seised of the Land in one Town or Hamlet, and the other of the Land in the other Town or Hamlet by himself; and they do not know the Bounds of the Towns or Hamlets, which is the Land of one, and which is the Land of the other; then to set the Bounds in certain, this Writ lieth for the one against the other; and the Form of the Writ is such:

*Rex Vic', &c. Præcip' tibi quod juste & sine dilatione fac' esse rationa- N biles divisas inter terram A. de B. in C. & terram D. de E. in F. sicut esse debent & solent, unde idem A. querit' quod prædict' D. plus inde trahit ad feodum suum quam ad ipsum pertinet habend' amplius, &c. Teste, &c.*

12 E. 3.  
24 E. 3.

And this Writ lieth for Tenant in Fee-simple, and against Tenant for O Life, and in this Writ the Tenant for Life shall have Aid of him in the Reversion, and they may join the *Mise* in this Writ, and it shall be tried by the Grand Assise, as other Writs of Right shall be.

And this Writ is *Vicontiel*, and may be determined by the Sheriff: For P the Plaintiff in this Writ shall make his Complaint before the Sheriff, in Nature of a Count, and upon the same the Sheriff shall make a Precept to warn the Defendant, and when he cometh the Plaintiff shall count, and the Defendant shall answer the same in the Count, &c. and if he deny it, then the Sheriff shall make the Division and Partition of the Land between them by certain Metes and Bounds.

See 129. B.

But if the Defendant will plead and join the *Mise* upon the meer Q Right, and put himself on the Grand Assise, then the Plaintiff ought to remove the same by a *Pone*, without Cause, and the Defendant may remove it with Cause, as it is said in other Writs. And the Count in this Writ is in this Form:

*Et idem A. modo venit & dicit quod cum rationabiles & rect' divis. esse R debent inter terram prædictam N. &c. in S. & terram ipsius A. & B. divis. prædict' incipient' versus Boream in quodam loco vocato K. & sic directe versus Austrum in longitudin' per L. usque E. ultra quas divisas prædictus N. &c. nihil habere debet versus Occidentem, idem N. &c. ultra divis. præd' traxerit ad feodum suum in S. de terra ipsius A. trecent' acras*



*acras more & pasturæ, &c. Unde idem A. dicit quod quidam W. nuper pat' suus fuit seistus in dominico suo ut de feodo per diversas metas & bondas tempor' pacis tempore, &c. capiend' inde explet', &c. ad valenc' & quod tale sit jus suum offert, &c. And the Tenant may join the Mife by Battail or by Grand Assise, &c.*

[129.]

**A** And divers Tenants in common of a Town or Hamlet, may have this Action against him who is Tenant of another Town adjoining, and they shall count one Count, and shall make their several Titles in that Count, and shall alledge the Esplees severally in the same Count. Which see in the Book of Entries, fol. 167.

**B** And the Defendant shall make his Defence several against every one of them, or may wage Battail, or join the Mife at his Pleasure, and then the Plaintiffs shall reply thereunto and recite anew their Count, and alledge the Esplees, as before, and then join to the Mife with the Tenant upon the mere Right, or by Battail at the Pleasure of the Tenant.

See 128. Q.

**C** And if they do join the Mife in the County before the Sheriff, by Battail, it shall be determined there, but not by the Grand Assise, &c. And it seemeth, that Tenant in Tail, nor a Parson of a Church, nor Tenant for Life shall not have this Writ, for he ought to have an Estate in Fee who maintaineth this Writ, and Summons and Severance lieth in

**D** this Writ, and the View shall be granted in this Writ. And Jointenancy or Coparcenary is a good Plea in this Writ, and the Writ may be brought against several Tenants, who have Tenements in Severalty or in common in the other Town.

*Writ Ex parte talis.*

**F** THE Writ of *Ex parte talis* lieth where Auditors are assigned unto a Bailiff or Receiver to account, and the Auditors will not allow unto the Bailiff or Receiver his (a) reasonable Allowances, which they ought to do, but commit him to Prison; he who is so imprisoned shall have this Writ *Ex parte talis*, &c. But if a Man brings a Writ of Account, and Auditors are assigned unto him who is Bailiff or Receiver, to take his Account, and they will not allow him his Allowances which they ought to do, &c. he shall not have this Writ of *Ex parte talis*, nor any other Remedy in that Case, for he may shew the same to the Justices, and they shall relieve him.

*Note 13 R. 2. Fitz. Account 51. upon this Writ of Ex parte talis, the Barons of the Exchequer use to allow an Averm. that*

the Plaintiff in the Writ hath paid the Money by the Commandment of the Owner, or such special Matter without Writing or Tally of the same.

**G** And if a Plea of Account be sued in London against a Receiver, &c. or in other Court of Record, and the Party appear, and Auditors are assigned

(a) *Note*; Payment to the Plaintiff, or Tally or Writing of the same. 13 R. 2. to another by his Command ought to be Account 51. sed contr' 6 R. 2. ibid. 47. per allowed, although the Accountant has no Belkn.

assigned him by the Court, and they will not allow unto him such Allowances which he thinketh they ought to do; he shall have a Writ of *Ex parte talis*; and the Writ is such:

*Rex, &c. Ex parte A. capti & detenti in prisona nostra Linc' pro arrengiis compoti sui, in quibus B. asserit ipsum sibi tener' de tempore quo fuit ballivus suus in M. nobis est ostensum quod auditores compoti prædict' per ipsum B. ad hoc deputat' ipsum A. super eodem compoto indebit' gravaverunt, onerando ipsum de receptis, quæ non recepit, vel non allocando ei expens. & liberationes rationabiles, in ipsius A. damnum non modicum & gravamen. Et quia nolumus quod eidem A. injuriatur in hac parte, Tibi præcipimus, quod si prædict' A. per testimonium auditor' compoti liberat' fuerit, & invenerit tibi suffic' manucap' qui eum manucapient habere coram Thesaurario & Baronib' nostris in Scaccario nostro, ad reddend' præfat' B. compotum suum juxta formam statuti de communi concilio regni nostri inde provis. tunc ipsum A. a prisona prædicta, si ea occasione & non alia detineat' in eadem, deliberari fac' per manucaption' supradict' : Et scire fac' prædict' B. quod tunc sit ibi cum rotul' & talliis, per quos prædict' A. compotum suum prius reddidit ad faciend' & recipiendum in præmiss. quod de jure & secundum formam statuti prædict' inde fuerit faciendum, & habeas ibi nomina manucap' illor' & hoc breve. Teste, &c. Vide Stat. inde Westm. 2. cap. 11.*

And this Writ shall be returnable before the Treasurer and Barons of the Exchequer at a certain Day, as it appeareth by the Writ.

And if a Man have Auditors assigned him in London by the Party who taketh the Account, and will not allow his Tallies or other Things to be allowed, but commit him to Prison, and because he is a Stranger in the City he cannot find Sureties to bail him to sue his Writ of *Ex parte talis*, &c. Then he may send unto the Chancellor, and surmise in the Chancery, and put in Sureties before the King there, and thereupon he shall have a Writ unto the Sheriff of London out of the Chancery, rehearsing the Matter, and how that he hath found Sureties there, according to the Statute, commanding the Sheriff to deliver him out of Prison; and the Writ shall be such:

*Rex Vic' Lond' &c. Ex parte A. &c. (ut supra usque ibi) non modicum & gravamen. Et quia idem A. forinsecus est in Civitate nostra Lond' & ignotus, per quod manucaptiores de eadem Civitat' invenire non potest de habend' ipsum coram Thesaurario & Baronibus nostris de Scaccario ad reddend' compot' suum prædictum & ad faciendum ulterius, & recipiendum quod Curia nostra considerabit in præmiss. vosque alios manucaptiores quam de Civitate ab eodem A. admittere recusastis, ac idem A. sufficient' manucaptor' coram nobis in Cancellar' nostra inventi, viz. C. D. & E. de Com' Eborac' qui eum manuceperunt habere coram Thesaurario vel ejus locum tenente, & Baron' nostris de Scaccario in quind' Paschæ, proxim' futur' ad recitandum ibidem compotum suum prædict' & ad stand' recto in præmiss. secundum formam statuti de communi concilio regni nostri inde provis, vobis mandamus, quod ipsum A. a prisona prædicta, si ea occasione & non alia detineatur in eadem, interim deliberari fac' per manucap' supradict'. Et scire fac' prædict' B. quod tunc sit, &c. per quos prædict' A. compotum suum prius redditum supradictum & ad faciendum*



*faciendum & recipiendum quod justum fuerit, & consonum rationi. Et habeas ibi hoc Breve, &c.*

**A** And if he do remain in Prison, he may sue the *Ex parte talis* returnable before the Treasurer and Barons of the Exchequer, and thereupon he may have another Writ out of Chancery directed unto the Treasurer and Barons of the Exchequer, that they take Sureties of him who is in Prison according unto the Form of the Statute; and that they deliver him out of Prison, and shall have another Writ unto the Gaoler, that he send his Body before the Treasurer and Barons of the Exchequer, and that he deliver the Body when the Treasurer and Barons send him a Writ so to do, &c. which Writ appeareth in the Register.

**B** (a) And if a Man be committed to Prison by Auditors for Arrearages of his Account, and afterwards escape out of Prison, the Gaoler shall satisfy the Party at whose Suit he was committed, and the Gaoler shall have a special Action upon the Case upon the Prisoner to answer the Escape and the Damages which the Gaoler hath sustained, which Writ is among the Writs of *Ex parte talis* in the Register; but it seems reasonable that the Gaoler may take the Party again, and so is the Opinion of some Books.

13 H. 7. 2.  
Vi. 6 H. 7.  
11, &c. 12.  
10 H. 7. 25.  
13 E. 4. 9.  
14 H. 7.  
Stamf. 33.

### *Writ of Execution upon a Statute-Merchant.*

**C** A Writ of Execution upon a Statute-Merchant lieth in Case, where a Man is bounden in a Statute-Merchant before any Mayor or Bailiff of a Corporate Town, who have Power to take such Bonds or Recognisances, to pay a certain Sum of Money at a Day, at which Day he doth not pay the same, then he to whom the Obligation or Recognisance is made, may come before the Mayor, or him before whom the Bond or Recognisance was taken, and pray him to certify the same into the Chancery under his Seal according unto the Statute of *Acton Burnel*; and if he will not certify the same as he ought to do, then the Recognisee may have such Writ directed unto the Mayor:

*Rex dilectis sibi Majori Linc' & T. Clerico ad recognitionem debitorum apud L. accipiendum deputatis, salut'. Ex parte I. nobis est ostensum, quod cum R. ann' regni nostri decimo, coram W. nuper majore villæ Linc' & H. nunc Clerico ad hujusmodi recognitiones in eadem villa accipiendas deputato, recognovisset se debere præfat' I. 24 l. juxta formam statuti dudum apud Acton Burnel pro mercator' editi, certis terminis solvend', & licet termini solutionis prædict' jam diu sunt elapsi, idemque I. vos sæpius requisierit, ut nos in Cancellar' nostra de recogn' prædict' juxta formam statut' prædict' certificaretis, & vos tamen nos in Cancellar' nostra prædict' super recognitione prædict' hucusque certificare distulitis, & adhuc differtis, unde quamplurimum admiramur. Vobis mandamus quod scrutatis rotulis de hujusmodi recognit' cor' præf. W. & H. ann' prædict' factis in custodia vestra, ut dicitur, existentibus*

But if a Statute-Merchant be acknowledged to one who is absent, it shall not bind the Commission if it be not delivered to the Commissionee, as it seemeth by 20 E. 3. Fitz. Account 79.

(a) And note that in this Case, altho' escapes, yet the Action lies against the an *Ex parte talis* be sued by the Party who Bailiff. 13 E. 3. Barr. 253.

*bus, si inceneritis recogn' prædict' in forma prædict' fact' fuisse & terminos solutionis prædict' elapsos fuisse, & nos in Cancellar' nostra alias inde certificat' non fuisse, tunc nos in eadem Cancellar' super recognitione prædict' distinsit' & aperte, juxta formam statuti prædict' sub sigillo pro recognitione mercatorum ibidem deputatis, certificetis ut ulterius super hoc fieri faciamus, quod secundum formam prædicti statuti fuer' faciendum.*

And if he will not certify by this Writ, he may sue an *Alias* and a *D* *Pluries* and Attachment against the Mayor and Clerk; and it appeareth by this Writ, that if an Obligation be once certified in the Chancery, it ought not to be certified again without Affidavit made, that Execution was not sued upon it, and then he shall have a special Writ unto the Mayor for it; for then it shall be taken as a several Obligation upon every Certificate.

And also it ought to be certified under the Seal of him who is deputed to seal the Obligation. And if the Mayor do make his Certificate *E* *F* unto the Chancery, then the Party shall have a Writ to execute the Statute, thus:

*Rex Vic' Linc' salut'. Quia A. de B. coram C. & C. clericis ad recognit' debitorum apud L. accipiend' deputat', vel sic, coram D. Majore: vel sic, coram L. nuper Majore Civitatis nostræ Linc' & F. Clerico, vel, tunc Clerico ad recognitionem debitorum apud L. accipiend' deput' recognovit se debere E. 10 libras quas ei solviffe debuisset ad festum, &c. ann', &c. & eas ei nondum solvit ut dicitur; Tibi præcipimus, quod corpus prædict' A. si laicus sit, capias & in prison' nostra salvo custodir' facias, donec eidem E. de prædicto debito vel execution' testamenti prædict' E. de prædict' 10 l. plene satisfecerit. Et qualiter hoc præceptum nostrum fuerit execut' nobis scire facias in Octab' S. Hill' ubicunque, &c. per literas tuas sigillat' & babeas, &c. (a)*

And this Writ may be returned as well into the Common Pleas as *G* King's Bench. And if a Man make a Statute-Merchant of 100 l. pay- *H* able at divers Days, if he fail of Payment at any of the said Days, the Recognisee shall sue Execution at that Day, and shall not stay his Execution until all the Days are past, as he shall do of an Obligation.

(b) If a Man be bound to pay 20 l. at divers Days, he shall not *A* have an Action of Debt upon the Bond, until all the Days are past. But if he who is bounden in a Statute-Merchant be a Clerk or Abbot, &c. then the Writ of Execution is of another Form, *viz.*

*Rex, &c. quia A. persona Ecclesiæ de B. coram, &c. præcipimus tibi quod prædict' 10 l. de bonis & catallis ipsius A. in balliva tua mobilibus sine dilatione levare, & eund' E. habere jac'. Et qualiter hoc præceptum, &c.*

For

(a) And if on this Writ the Sheriff returns the Party dead, or *non est inventus*, a Writ shall issue to extend the Lands. But on a Statute-Staple certified, the Conusee shall have the Body, Goods and Lands, by one Writ. 15 H. 7. 14. and note, by 29 E. 3. 1. it appears, that the Reprises of the Land (whereout the Conusee had Rent of 20 l. issuing) was of greater Value than the Ex-

tent; and yet it was intended that the Lands were taken and delivered, though it was impossible to levy the Debt on that Extent. And note; The Sheriff made a Delivery accordingly on the *Liberate*; yet on the Return thereof, Judgment is rendred, *Quod teneat quousq' levaverit, &c.*

(b) *Post. 167. 13 H. 4. F. Chancery 140. per Hill.*

[131.]

6 E. 3. 39.

Contrary in  
Covenant; or  
if he assent to  
pay, by 5 Ma.  
107. 32 H. 6.  
cont. 14 H. 8.  
14. Brudenell.



For a Clerk shall not be arrested by his Body upon that Statute, and if Process be awarded to arrest him, by that Statute he shall have a Writ unto the Sheriff, that he do not trouble or molest him, and if he have arrested him for the same, that he deliver him, if he know no Cause why he should not enjoy the Privilege of a Clerk: And in some such Writ there is a Proviso put in the End of the Writ thus:

*Proviso quod præd' decem libr' de terr' bonis & catallis ipsius A. si non levata fuer' juxta formam statuti prædict' levantur, ut est justum, &c. Teste, &c.*

**B** (a) If a Man be bounden in a Statute-Merchant in 20<sup>l</sup>. and the Statute at the Suit of the Recognisee is certified in the Chancery, and afterwards he dieth, his Executors may have a special Writ unto the Mayor, reciting the Certificate before them, commanding them to certify the same again into the Chancery, and the Writ is such:

*Monstraver' nobis L. & W. execut' testament' L. de B. quod cum R. &c. (ut supra usque ibi) juxta formam statuti prædict' certificaretis: Vos tamen pro eo quod per rotulos vestros invenistis quod Cancellar' nostra super eadem recognition' alias esset certific' quicquid inde facer' non curastis, ac prædict' execut' coram nobis in Cancellar' nostra personaliter constituti asseruerunt, aliquam execut' recognit' prædict' in vita ipsius L. seu post mortem suam virtute certificat' inde in Cancell' prius fact' nullatenus fact' fuisse, & nobis supplicaver' ut sibi in hac parte velimus de remedio providere. Et quia eisdem execut' quatenus juste poterimus in hac parte velimus subvenire, vobis mandamus, quod scrutat' rotul' vestr' hujusmodi recognit' contingent', si inveneritis recognit' illam in forma prædict' factam fuisse, & terminos solvition' transactos esse, ut est dictum, tunc nos in Cancellar' nostra super recognit' præd' distincte & aperte sub sigillis vestris pro recogn' debitor' ibidem deputat', prout moris est, certificetis, non obstante Cancellar' nostr' prius inde extitit certificata. Teste, &c.*

**A** But this Writ is not granted but upon Affidavit and Oath made by the Executors in Chancery, or by him who would have that Execution.

## (b) Writ of Execution upon a Statute-Staple.

**A**ND if a Man be bounden before the Mayor of the Staple in a certain Sum, to pay at a certain Day, &c. and he do not pay it according to the Statute; then he to whom the Obligation is made, shall come before the Mayor and shew him the Statute, and pray him to certify it under the Seal into the Chancery, as he shall do upon a Statute-Merchant. Or the Mayor may award Execution if the Party be

R. r

dwelling

(a) So note; Executors cannot proceed on the old Certificate, viz. to commence wheret he Testator left off, but they must begin again *de novo*. See *Dyer* 180. 17 E. 3. 31. 18 E. 3. 10. 28 E. 3. 91. 25 E. 3. 33.

36 H. 8. Bro. Stat. Merch. 43. 17 E. 3. 31. in principio.

(b) Note; Execution by a Mayor of the Staple, can be only within his Jurisdiction.

Vi. 45 E. 3.  
22. Finchd.  
Execution  
shall be sued  
first of the  
Goods, and  
then of the  
Lands.  
But 7 R. 2.  
Execution  
46. the Party  
hath his E-  
lection to  
take one or  
the other,  
and so is the  
Use at this  
Day.

dwelling within his Jurisdiction, or have Lands or Goods there, &c. And if the Mayor will not certify at the Request of the Party, then he shall have a Writ out of the Chancery unto the Mayor to certify the same, as he shall have upon a Statute-Merchant shewed in Chancery; and upon the same an *Alias* and a *Pluries*, and Attachment against the Mayor if need be; and when the Mayor hath certified the Statute under the Seal, then the Writ of Execution shall issue forth against the Party, to arrest him, and to extend his Lands, &c. and this Writ shall be always returnable in the Chancery, and not in the King's Bench nor Common Pleas, as the Writ which issueth forth to do Execution upon a Statute-Merchant; and the Form of the Writ is such:

*Rex Vic' Linc' salut'. Quia R. de W. xx. die Septembr' & ann', &c. coram E. de B. Majori stapul' nostr' de B. ad recogn' debitor' in eadem Stapula accipiend' deputat' recognovit se debere W. de F. octo libr', &c. quas ei solvisse debuit in Festo, &c. tunc, &c. Et quas ei nondum solvit, ut dic'. Tibi præcip' quod corpus præd' R. si laicus sit cap' & in prisona nostra donec eidem W. de præd' debito plene satisfecerit, salvo custod', & omnia terras & catall' ipsius R. in balliva tua per sacrament' proborum & legalium hominum de balliva præd', quo rei veritas melius sciri poterit, juxta verum valorem eorund' diligent' extendi & appreciar' & in manum nostram seisciri fac', & ea præf. W. quousque sibi de debit' præd' satisfact' fuer' liber' fac' juxt' form' ordination' inde fact'. Et qualiter hoc præcept' nostrum fuerit execut' scire fac' nobis in Cancell' nostr' in Crastin' animarum proxim' futuro ubicunque tunc fuerit per literas tuas sigillatas, & habeas ibi hoc breve, &c.*

And by this Writ it appeareth that the Sheriff may arrest the Conusor, and extend and take his Lands, Goods and Chattles, and return the same Extent in Chancery, &c. And thereupon the Conusee may sue a Writ unto the Sheriff out of the Chancery to deliver him the Lands and Goods to the Value of the Debt, which Writ is called *Liberate*, and is such:

[132.]

*Rex Vic', &c. Cum R. de W. xx. die (usque ibi) per literas tuas sigillatas, & tunc sic: Ac tu nobis returnasti, quod præd' R. non fuit inventus in balliva tua, postquam breve nostr' tibi liberat' fuit, sed quod cepisti in manus nostr' omnia terras & tenementa & catalla ipsius R. in dicta balliva tua, & ea extendi & appreciari fecisti juxta tenorem brevis nostri prædict', viz. duas partes unius messuagii quæ appreciant' ad quinque libras, Tibi præcipimus, quod eidem A. omnia terras & tenementa, & catall' prædict' per te in manus nostras sic capta, si ea per extent' & aprec' prædict' habere voluerit, liberes, habend' juxta form' ordination' prædict' quousque sibi de debito prædict' fuer' satisfact'. Et qualiter hoc præceptum nostrum fueris execut' scire fac' in Cancell' nostra in quinden' Paschæ prox' futur' ubicunque tunc fuerit per literas, &c. Et habeas, &c.*

And if a Man be bounden before the Mayor of the Staple, or in a Statute-Merchant before another Mayor, &c. and have no Lands but in Durham, or other County Palatine, then upon the Certificate of the Statute made by the Mayor, &c. upon the Return of the Sheriff, that he hath not Lands nor Tenements within his Bailiwick, the Party may surmise that he hath not any Thing but in the County Palatine, &c. and



and pray that the Tenor of the Record may be sent thither, to have 2 E. 4. 10. Execution done, and upon that Surmise he shall have such Writ.

Writ to do Execution in a County Palatine.

**R**EX venerabili in Christo patri I. eadem grat' Dunelm' Episc' vel ejus Canc' in Episcopatu prædict' salut', &c. Tenore cujusdam statuti de stapula facti coram W. de W. nuper Majore stapul' Westm' ad recognitiones debitorum in eadem stapula accipiend' deputat' de xl. li' T. de W. jam defunct' ut dicit' & E. de R. civ' Lond' per Agnetem quæ fuit uxor H. de R. Episcopat' Dunelm' nuper recognitis, & per N. B. nunc Major' dict' stapulæ in Canc' nostram' missi: Vobis mittimus præsentibus interclusum, ut inspecto tenore præd' ulterius ad prosecutionem Katharinæ quæ fuit uxor præfat' T. I. F. & R. de L. executor' testamenti præd' T. executionem recognitionis præd' fieri fac' prout de jure & secund' legem & consuetud' regni Angl' fuerit faciend'. Teste, &c.

**B** And if the Statute be not sufficiently certified in the Chancery by the Mayor, &c. because he hath omitted any Part of the Bond, as the Name, or Surname, or other Matter material, then upon Affidavit made, that he hath not had Execution by Reason of that Certificate, he shall have a new Writ unto the Mayor and Clerk, &c. to certify the Statute fully again into the Chancery, notwithstanding his Certificate made before, and that Writ doth appear in the Register.

Note, 2 R. 3. 7, 3. Several Certificates were made upon one Statute. But it cannot be intended but that they were three several Statutes. And note, That several Writs were awarded upon them to several Sheriffs.

If the Mayor doth make a Certificate of the Statute into the Chancery, and deliver the same unto the Recognisee, and the Party keepeth the Certificate, and will not put it into the Chancery; and afterwards another is made Chancellor, the Party ought to have a new Certificate to that Chancellor, otherwise he shall not have Execution of the Statute upon that Certificate made to the old Chancellor, which was not delivered in Time into the Chancery: And then he ought to sue a Writ in Chancery directed unto the Mayor, to make a new Certificate, and the Writ shall be such:

Rex, &c. Majori Stapulæ Westm' ad recognitiones debitorum in eadem stapula accipiend' deputat' salut'. Ex parte D. &c. nobis est ostens. quod cum W. de E. &c. ann' regni nostri tertio coram vobis in stapula prædict' recogn' se debere præf. A. xl. li' juxta formam statuti stapulæ prædict' cert' termin' solvend', & licet vos termino solution' prædict' elapso K. Episc' London' nuper Cancellar' nostro dum in officio Canc' stetit, sub sigillo officii nostri, prout moris est, certificaveritis, quia tamen prædict' D. dictam certificat' penes se hucusque retinuit, & præf. R. nuper Canc' cui prius nominatim inde certificastis, ab officio suo Canc' a diu est & extitit onerat', Volumus, & vobis mandamus, quod dictam certific' præf. nuper Canc' per vos sic fac' sane & integ' vobis restit' & scrutatis rotulis de hujusmodi recognitione coram vobis ann' prædict' factis, si inveneritis recognition' prædict' factam fuisse, tunc Canc' nostro moderno in eadem Canc' super recogn' prædict' distinct' & apert' juxta form' stat' prædict' sub sigillo pro recognitionibus stapulæ præd'

*deputat' certificet' indilate, ut ulterius super hoc fieri faciamus, quod secundum formam statuti predict' fuer' faciend' dicta certific' prius sic facta non obstante. Teste, &c.*

But Note, That if in the first Certificate he hath not expressed the Name of the Chancellor, that then he may deliver that Certificate to the new Chancellor, and sue Execution upon it, and therefore it is good to make the Certificate general to the Chancellor without naming his Name.

### Recognisance in the County before the Sheriff.

[133.] IF a Man doth acknowledge in the County before the Sheriff to pay to another a certain Sum of Money at a Day certain, and do not pay it at the Day, then the Recognisee shall have Writ out of the Chancery unto the Sheriff, commanding him to do Execution upon that Recognisance; and the Writ shall be such:

*Rex Vic', &c. Monstravit nobis A. quod cum ipse implacitasset in Com' tuo per brev' nostrum B. & idem B. in pleno Com' illo recognovit se debere præf. A. certam pecuniam ad certum termin' reddend' tu tamen termino illo elapso, eandem pecuniam eidem A. nondum solutam ad querimoniam secund' recognitionem suam habere non fecisti, in ipsius A. damnum non modicum & gravamen. Et quia eid' A. prout justum fuerit subvenire volent' in hac parte Tibi præcipimus, quod si ita est, tunc pecuniam illam de bonis & catallis ipsius B. in Balliva tua levare, & illa præf. A. sine dilatione habere fac' ne clamor ad nos inde perveniat iteratus. Teste, &c.*

Bro. Recog. But it seemeth Recognisance shall be made when a Plea is depend- A  
36. Ant. 132. ing in the County before the Sheriff by Writ between the Parties in Debt, &c. but if there be not any Plea depending in the County by Writ, but by Plaint, *Quære* if that Recognisance shall be made; and it seemeth reasonable that it may be taken, as well as when the Plea of Debt is depending in the County before the Sheriff by Plaint, as if it were by the King's Writ.

But if a Man come into the County before the Sheriff, and there in Court acknowledge to pay a certain Sum of Money, unto another at a certain Day, &c. where there is not any Plaint or Action depending, betwixt the Parties, whether this Acknowledgment shall be good or not, *Quære*. And it seems reasonable, that if it be under the Sum of forty Shillings, that such Acknowledgment shall be good, and bind the Party.

And if the Party have a Writ to the Sheriff to do Execution of such B Recognisee (as before is said) and the Sheriff will not do the same, then the Recognisee may sue an *Alias* and a *Pluries*, and Attachment against the Sheriff; and the Form of the Writ is such:

*Rex, &c. Ex parte A. accepimus, quod cum nuper tibi præciperimus, quod si B. recognosceret se debere A. tantam, tunc ipsum B. distringeres ad præd' debit' eidem A. sine dilatione reddend', ac licet idem B. coram te recognoverit se debere præf. A. predict' debit' tam n ipsum B. ad debitum illud reddend' distringer'*



*disfringer' hactenus distulisti, & adhuc differs, in ipsius A. damnum non modicum & gravamen: Et ideo tibi præcipimus, quod si ita est, tunc execution' recognitionis sine dilatione fieri fac' juxta tenorem mandati nostri præd' & hoc nullo modo omittas. Teste, &c.*

But it seemeth by this Writ, that if the Recognisor will not again acknowledge the Debt before the Sheriff when he cometh to him to do Execution, &c. but say that he hath paid the same, that then the Sheriff ought not to do Execution.

And there is another Writ in this Form:

*Rex Vic', &c. Præcip' tibi, quod si A. recognovit se debere B. centum solid' tunc ipsum A. distr' ad prædict' debitum eidem B. redd'.*

And he may have an *Alias* and a *Pluries* and *Attachment* upon the same, &c. And if the Sheriff return upon the *Alias*, *quod distrinxit partem per frument' vel per alia catal' ad quod non invenit emptores*, Then by the Title of the Register shall be awarded a Writ of *Pluries reitendo* returnable, & *illud insuffic' reputand'*, &c. But *Quære* tamen of that; for it seemeth to be a good Return: And *Quære* if the Sheriff may sell the Goods to pay the Recognisance, for it seemeth by the Register he may sell the Party's Goods.

C And if a Man be in Execution upon a Statute-Merchant, he ought to be found in Prison for the Rent and Revenues of his Lands which are in Execution, &c. that is to say, with Bread and Water, as appeareth by the Statute; and if he have not the same, he may sue a Writ upon the Statute directed to the Mayor and Sheriff, where he is in Execution, that he have the Livelihood which the Statute giveth him; and the Writ is such:

Ant. 131.  
Sustena. of  
the Cognisor.

*Rex Majori & Vic' Lond' salut'. Cum in Statuto de Mercator' edito continetur' quod mercatores pro quorum debitis contigerit debitores suos per formam statut' prædict' arrestari & imprisonari, invenire teneantur debitoribus illis in prisona commorant' panem & aquam ad sustentationem suam. Vobis præcipimus, quod W. de S. pro debit' E. de K. per formam statut' nostri prædict' ut dicitur arrestat' & in prisona nostra detent' si ea occasione & non alia detineatur in eadem, fieri fac' in hoc casu, quod fuerit faciend' & in casu consimili fieri consuet' juxta form' Statuti præd' T. &c.* And upon that he may have an *Alias*, *Pluries*, and *Attachment*.

## Writ de Perambulatione facienda.

Ant. 128.

D A Writ de Perambulatione facienda ought to be sued with the Assent of both Parties, where they are in Doubt of the Bounds of their Lordships, or of their Towns; then they by Assent may sue this Writ, directed unto the Sheriff to make the Perambulation, and to set the Bounds and Limits between them in Certainty; and the Writ is such:

E *Rex Vic', &c. Præcipimus tibi, quod assumpt' tecum 12. discretis & legal' Milit' in Com' tuo, in propria persona tua accedas ad terram A. de B. in N. & terram C. de D. in E. & per eorum sacramentum fieri fac' perambulat'*  
inter

*inter terram ipsius A. de B. in N. & terram ipsius C. de D. in E. ita quod perambulat' illa fiat per certas metas & divisas: Quia predict' A. & C. posuerunt se coram nobis in perambulationem illam, & scire fac' Justic' nostris apud W. &c. tali die, vel Justic' ad primam assis. &c. sub sigillo suo & sigillis quatuor legal' Milit' ex illis qui perambulat' illi interfuer' per quas metas & divisas perambulatio illa facta fuerit; & habeas ibi nomina Militum, & hoc breve.*

[134.]

19 E. 3. 58.

And the King may make his Commission to other Persons to make A that Perambulation, as well as to the Sheriff, and to certify the same into the Common Pleas, or in the Chancery, or elsewhere, &c. And such Commission is oftentimes (a) granted to make Perambulation of three or four Counties where they are in Doubt in the Bounds and Limits thereof, and this Perambulation made by Assent, shall bind all the Parties and their Heirs.

But if Tenant for Life be of a Seignior, and another who is Tenant B in Fee-simple of another Seignior adjoining, sue forth such a Writ or Commission, by Reason whereof a Perambulation is made, it seemeth the same shall not bind him in Reversion; neither shall the Perambulation made with the Assent of Tenant in Tail bind his Heir.

And the Perambulation may be made for divers Towns, and in divers C Counties, and the Parties ought to come in Person into the Chancery, and there acknowledge and grant that a Perambulation be made betwixt them, and the Acknowledgment shall be enrolled in the Chancery, and thereupon a Commission or Writ shall issue forth. And if the Parties cannot come in Chancery, then they ought to sue forth a Writ of *Dedimus potestatem* directed to certain Persons, to take their Acknowledgment, and to certify the same into the Chancery under his Seal, &c. and then upon that Certificate returned into the Chancery, That Commission or Writ may be granted, altho' the Parties do not appear in Person in Chancery to pray the same.

### Writ de Warrantia Charta.

In a Warrant Charta, the Defendant said that he had a *Fornie-don* pendant of the Land and no Plea, and that was against the Issue in Tail. *Itin. North. 2 E. 3. Garr. de Charters 13. 2 E. 2. Ibid. 6.*

THE Writ of *Warrantia Charta* lieth properly where a Man doth D enfeoff another by Deed, and bindeth him and his Heirs to *Warrantia*, &c. Now if the Defendant be impleaded in an Assise, or in a Writ of Entry in the Nature of an Assise, in which Actions he cannot vouch,

(a) Note; A Division was made between the Counties of C. and H. by an Enquest taken of four Counties by Force of a Commission; and resolved, (1.) That if Land lying in the Town of A. but in Truth within the County of C. be allotted to the County of H. that they shall still remain

of the Town of A. as before. (2.) That this shall not conclude any of the County of C. to suppose by Writ or otherwise, that the Lands are in the County of C. (3.) If they are at Issue on this Point, it shall be tried by a *Venue* of both Counties. *Quere 29 E. 3. 45.*



vouch, then he shall have that Writ against the Feoffor or his Heir, who made such Warranty; and the Writ is,

E (a) *Rex, &c. Præc' A. quod iuste, &c. warrant' B. unum messuag' cum pertin' in D. quod tenet, &c. de eo tenere clam' & unde chartam suam habet, ut dicit', &c. vel sic: Manerium de N. cum pertin' & advocat' Ecclesiæ ejusdem ville quam tenet, &c. (usque ibi) unde chartam suam habet, vel chartam D. patris vel matris vel alterius antecessoris, cujus hæres ipse est, ut dicit & nisi, &c.*

Two Tenants in Common shall join in this Writ. 28 E. 3. 90. so where three are

Jointenants, and a Release to the other two. 40 E. 3. 41, 42. 16 H. 7. 6, 7. If the Defendant tender a Plea to the Plaintiff, and the Plaintiff will not enter it; he shall not have Advantage in this Writ.

And although the Writ doth suppose that he holdeth of the Defendant, yet that is not material whether he holdeth of him or not.

F And also that the Plaintiff holdeth any Land of the Defendant by Homage *Auncest'* and hath not Charter thereof: (b) Yet he shall have this Writ of *Warr' Chartæ* against the Defendant, and the Writ shall say *unde Chartam habet, &c.* and yet he hath no Deed to shew, but only shall hold by Homage *Auncestrel*, which implieth a Warranty, and therefore in that Case, these Words, *unde Chartam habet, &c.* are not material.

5 Eliz. Dyer 221. If the Warranty be only against the Grantee and his Heirs, and there be not

*Dedi & Concessi* in the Charter, *per Curiam*, the Writ lieth not.—— 12 H. 3. *Garr. de Charters* 27. One brought this Writ. *Unde Chartam suam habet*: The Defendant said, *Non habet Chartam suam*, and the Plaintiff confessed the same, and said it was *Charta antecessoris sui*; adjudged for the Defendant.

G If a Man have a Lease of Lands for Life rendring Rent, or maketh a Gift in Tail rendring Rent without Deed, and afterwards the Lessee or Donee is impleaded in such Action where he cannot vouch, then he shall have this Writ of *Warrantia Chartæ* against the Lessor or Donor, or his Heir who hath the Reversion: For that (c) Reversion and Rent reserved,

Co. Lit. 384. b. 21 H. 6. 8. Upon Owelty of Services, this Writ lieth; but that is after Seisin of the Services.

(a) Note; This Writ concerns the Land, and therefore a Fine may be levied thereon. 18 E. 4. 22. if it be brought in the County where the Land is. 29 E. 3. 3. *per Kirt. Sed Stouff. contr.* Yet for that this Writ is founded on the Covenant, which is in a Manner personal; although thereby the Plaintiff ought to recover Lands in Value; it is in the Parties own Election to bring the Writ in what County he pleases, and he need not bring it in the County where the Lands lie; for if he be impleaded thereof, he may well vouch in any County. 31 E. 3. *Garranty de Charters* 14. *per Thirn.* and so adjudged accordingly, and agreed by *Thirn. &c.* That if the Lands, &c. in divers Counties are passed by a Deed or Fine, he need not sue several Writs, but one Writ shall satisfy for all. 29 E. 3. 3, 4. but he ought to suppose in his Count, that he is impleaded in each

County. Dyer 221. *Quare.* See 12 H. 3. pl. 27. 24 E. 3. 35.

(b) See *Post.* 135. 24 E. 3. 35. 44 E. 3. pl. 18. 6 H. 7. 1, 11. and note by 29 E. 3. 4. he dervained the Warranty against the Defendant, by bringing a *Scire facias* without shewing the Record.

(c) Note; Tenant by the Curtesy shall not vouch the Heir to recover in Value; nor the Lessee for Life, him in Remainder. 14 H. 6. 25. and 10 H. 7. 10. a good Case of Voucher and Recovery in Value, *per Cur'* a Reversion and Rent without the Words *Dedi, &c.* without Deed, good to bind him in the Reversion to Warranty, be it the Lessor or his Grantee. 10 H. 7. 10. 34 E. 3. *Garranty* 30. 20 E. 3. *Counterplea of Warranty* 7. But the Vouchee there may disclaim if he be not the Lessor, &c. 10 H. 7. 10. So if he be (not) Lessor, Grantee or Heir. 17 E. 3. 39. 18 E. 3. 42. See *Co. Lit.* 384. b.

21 H. 6. 8. reserved, maketh a Warranty in it self by the Statute of *Bigamis*, cap. ult. altho' he hath not any Deed thereof.

Upon a Feoffment in Fee with Warranty, he ought in his Count to set forth the Deed 14 E. 3. 35. acc. (a) And if a Man give Lands to one in Fee by Deed by these Words, *H Dedi, concessi, &c.* now he is bound to warrant the Lands to the Feoffee by those Words, and if the Feoffee be impleaded, he shall have a Writ of *Warran' Chartæ* against the Feoffor, by these Words, *Dedi, concessi, &c.* but not against his Heir, for the Heir shall not be bounden unto a Warranty made by his Father, unless he bind him and his Heirs to Warranty by exprefs Words in the Deed: As to say, *Ego & heræd' mei omnia prædict' terras, &c. warrantizabimus, &c.*

In a *Præcipe* against the Feoffor, or against him against whom he hath the Warranty, if he be impleaded in any Action in which he may vouch him, for then he ought to vouch him to Warranty; and if he will not vouch him to Action, he shall not afterwards have a Writ of *Warrantia Chartæ* (b). with Warranty for Doubt the Possession shall be counterpleaded, he shall have this Writ. *Wood and Brian.* 12 H. 7. 2.

(c) And a Man may sue forth this Writ of *Warrantia Chartæ* before K he be impleaded in any Action, but yet the Writ doth suppose that he is impleaded: And if the Defendant appear and say that he is not impleaded, by that Plea he confesseth the Warranty, and the Plaintiff shall have Judgment to recover his (d) Warranty, so as if the Defendant be after impleaded, and vouch him to Warranty, and he entreth into the Warranty, and pleadeth and loseth, and that the Defendant recover in Value. The Defendant shall have in Value of the Lands against the Vouchee, which he had at the Time of the Purchase of his *Warrantia Chartæ*, and therefore it is good Policy to bring his *Warrantia Chartæ* against

21 H. 6. 41. he shall have in Value the Lands which he had at the Time of Judgment, for the Judgment makes them subject to the Execution. 1 E. 3. 11. *Fitz Garr. de Charter* 2. ac. 8 E. 2. *Voucher* 237. A Man cannot vouch a Clerk attainr, or a Man outlawed; but rather have *Warrant' Chart'.* Cont' of an Ideot *Quod reddat.* *Quare* if it be Law at this Day. *Br. Warr. Chart.* 29. 8 E. 4. 10. *Markham* acc. 24 E. 3. *B. Warrant. Chart.* 13. acc. 19 E. 3. *Garr. Chart.* 9. ac.

(a) *A.* makes a Lease for Life by *Dedi*, and grants over the Reversion; yet the Lessee may vouch *A.* 48 E. 3. 2. See 6 H. 7. 2. 14 H. 6. 25. 48 E. 3. 2. *Perk.* 26. and note; if one warrants only against himself and his Heirs, Warranty of Charters does not lie, *per Cur'*, if it has not the Word *Dedi* in the Deed. *Dyer* 221.

(b) See 18 E. 3. 42. *Garranty de Charters* 8. It is no Plea here to say that the Plaintiff is impleaded in such an Action, wherein he may vouch, &c. though it is a good Plea to say, that he was not Tenant the Day of the Writ purchased; yet in a *Scire facias*, it is a good Plea to say, that he was impleaded in such an Action wherein he might vouch, but did not, &c. and so by

Reason of his Default he could not have Execution. See accordant 9 E. 2. *Garranty de Charters* 30. that it is a good Plea. *Vid. infra K. sed N. Br.* 135. D. *contr.*

(c) And therefore the Count is good, without shewing for what he is impleaded. 29 E. 3. 4. (*post.* 135. B.) See 7 H. 6. 17. a *Scire facias* against a Disseisor on a Fine, and pending the Writ the Disseisee enters, he shall not have a Warranty of Charters, if no *Scire facias* be sued against him. By *Paston.*

(d) But no Damages. 18 E. 3. 42. 29 E. 3. 4. 31 E. 3. 22. See 2 H. 4. 14. *contr.* and 1 E. 6. 11. *contr.* See 16 E. 3. pl. 20. *contr.* 9 E. 2. pl. 30.



gainst him before he be sued, to bind the Lands of the Vouchee which he had at (a) that Time. For if a Man be vouched, he shall not render in Value, but of the Lands which he had at the Time of the Voucher, and if he have aliened the Lands before the Voucher, he shall render nothing in Value; and therefore it is Policy to bring his *Warrantia Chartæ* against him when he hath the Land to render in Value. And upon this Writ and Judgment, the Land shall be bound. But if a Man recover his Warranty by Writ of *Warrantia Chartæ*, and hath bounden the Land which the Vouchee had at that Time; yet if he be afterwards impleaded for that Land, for which he recovered his Warranty, he ought to vouch him against whom he recovered his Warranty, to defend the Land, if he be sued in any Action wherein he may vouch, otherwise he shall not have Advantage by Recovery of his Warranty in the *Warrantia Chartæ* (b).

[135.]

**A** And if a Man recover his Warranty in a *Warrantia Chartæ*, and afterwards is impleaded in an Action in which he cannot vouch, as by Assize, or by (c) *Scire facias* sued forth upon a Fine, &c. It seemeth he ought to give Notice to him against whom he hath recovered his Warranty of the Action, and to pray him to shew him what he shall plead for to defend the Land, &c. *Quære tamen* (d) thereof.

**B** If a Man exchange Lands with another by Deed, if he be impleaded, he may vouch him with whom the Exchange was made, by Reason of that Exchange; and also he shall have a Writ of *Warrantia Chartæ* by that Deed of Exchange, although there are not Words of Warranty in the Deed; and the Vouchee shall have a Writ of *Warrant' Chartæ, tamen quer'* (e) of that.

23 H. 3.  
Gar. Chart.  
ters 26.

S f

And

(a) *Viz.* At the Time of the Warranty derained, per *Hill.* 16 E. 3. *Garranty de Charters* 20. and per *Finchd.* If the Defendant has not Lands in Value, the Plaintiff shall recover Damages. 29 E. 3. 3. *vide post.* 135. H.

But note; If the Tenant vouch, and after the Entry into the Warranty the Vouchee dies, and in a Resummons against him he revouches the Heir, and the Heir loses all the Land, which his Ancestor had the Day of the Voucher, he shall be bound to render in Value to the Tenant, per *Wilby.* 18 E. 3. 17. and see the like per *Cur.* 22 E. 3. 3. But it is there held, That when he recovers in Value in another County, than where the Vouchee is summoned (except the Tenements descend after the Voucher) he shall not. 13 E. 3. *Recovery in Value* 3. Yet see 4 E. 2. *Voucher* 248. *quod si*, per *Chester* on a *Testatum*, *quod Hill negavit.* See 29 E. 3. 4. 16 E. 3. pl. 20. 46. *Aff.* 51. 19 E. 3. pl. 9. 41 E. 3. pl. 22.

(b) See accordant 18 E. 3. 42. 19 E. 3. *Garranty de Charters*— that it is a good

Plea in a *Scire facias* on a Judgment in a *Warrantia Chartæ*, but not in the *Warrantia Chartæ* it self.

(c) It seems he ought to bring his *Scire facias pendente placito.* 19 E. 3. *Garranty de Charters.* 11 E. 3. *ibid.* 22. But in the *Scire facias* he ought to shew the first Deed if the Deed be not entred. 18 E. 3. 46. per *Thirn.* *vide* 8 E. 4. 1.

(d) And therefore the Guarrantor may maintain the Guarrantee in an Assise brought against him, on the Tenant's Request. 11 H. 6. 41.

(e) *Videtur quod sic*, per *Thirn.* 17 E. 3. 44. *sed Hill and Shard contra*, because none shall have it but the Tenant himself; yet see 18 E. 3. 19. per *Shard.* and 7 H. 4. 18. That a Vouchee shall have a *Warrant' Chartæ* where he cannot vouch (over) 21 E. 3. 50. and by *Seaton*, the Defendant in a *Warrantia Chartæ*, has no Remedy to have his Warranty over. See 31 E. 3. *Warranty of Charters* 22. per *Burton*, that a Tenant by Warranty shall have his Warranty over. *Vide ant.* 124. F. 23 H. 6. pl. 26. 17 E. 2. 44. *contr. quare* 15 E. 3. pl. 25.

7 H. 4. 18.  
17 E. 3. and  
Br. War. ch.  
30. None  
shall have  
the Writ but  
the Terre-  
Tenant.

24 E. 3. 25.  
Willbye 7 E.

4. 12.

3 E. 4. 7.  
A good Plea  
that he had  
nothing in  
the Land  
jour de brie  
pur. hase.

19 E. 3.

Gar. ch. 10.

4 E. 3. Gar.  
ch. 12. acc.  
for Rent-  
Service.

E 1. Vou-  
cher 266.

21 H. 6. 40.  
Newton.

See Littl.

111. for the  
Reason of  
this Case.

And if a Man be impleaded who is not Tenant of the Land, but Per- C  
nor of the Profits, he shall not have a Writ of *Warrantia Chartæ*, be-  
cause he can lose nothing. And a Man shall have a Writ of *Warrant'* D  
*Chart'* although he may vouch in the Action brought against him, and  
if he do recover in the *Warrantia Chartæ*, and afterwards lose in the  
Action brought against him, in which he hath vouched him against whom  
he recovered his Warranty, then he shall have a Writ which is called  
*Habere fac' ad valenc'* (a), &c. presently within the Year after the Reco-  
very, and shall not sue forth *Sci. fac.* And an Assignee shall have a Writ  
of *Warrant. Chart.*

(b) And a Man shall have a Writ of *Warrant. Chart.* of Land or Rent E  
which he demanded against him out of Land, &c. but there he ought  
to vouch of Land discharged of the Rent, &c. if he may vouch in the  
Action.

(c) And a Man may bring his Writ of *Warran. Chart.* in what County F  
he pleaseth, if the Deed bear not Date in a certain Place, or County;  
for then he ought to bring the Writ where the Deed beareth Date. But  
if a Man bring a Writ of *Warrantia Chartæ*, by Reason of Homage  
*Auncestral*, &c. then it ought to be brought in the County where the  
Land lieth.

(d) And if a Man doth enfeoff another of Lands by Deed with War- G  
ranty, if the Feoffee make a Feoffment over, and taketh back an Estate  
in Fee, the Warranty is determined, and he shall not have a Writ of  
*Warrantia Chartæ*, because he is in of another Estate. And so if *A.*  
disseise *B.* and enfeoff *C.* (e) with Warranty, who enfeoffeth *D.* with  
Warranty, upon whom a Stranger entreth, in whose Possession *B.* the  
Disseisee releaseth his Right, all the Warranties are extinct, and if *D.*  
re-enter, and be impleaded, he shall not have a Writ of *War. Chartæ*,  
because he is in of another Estate by Wrong. (f) But if a Man be  
impleaded

(a) So is 16 E. 3. *Garranty de Charters*  
20. *contr.* where he recovers before the  
Writ brought against him; yet there he  
shall have a *Scire facias*. 19 E. 3. *Warranty*  
*of Charters* 10. And it seems if the Defen-  
dant does not acknowledge (or know) that  
he has lost, he shall have only a *Scire fa-*  
*cias*. 16 E. 3. *ibid.* 20. and 29 E. 3. 4. per  
Tiff. See 18 E. 3. 4. 2. 9 E. 2. pl. 2. 45 E.  
3. 10. *Bro. Warranty* 20. 36 E. 3. pl. 11. 9  
E. 2. pl. 30. 31 E. 3. pl. 22.

(b) So is 30 E. 2. 20. 31 E. 3. *Garranty*  
*de Charters* 20. per *Fin. bd.* but others *contr.*  
where the Case was, *A.* enfeoffs *B.* with  
Warranty, and *B.* recovers in a *Warrantia*  
*Chartæ* on a general Count of the Land,  
and afterwards a Rent is recovered against  
him; and he brings a *Scire facias* on the  
general Judgment in the *Warrantia Chartæ*  
to have the Value of the Rent; and per  
Thirn. he shall not have in Value, seeing

he never demanded Warranty of the Rent,  
but *Fin. bd.* and it seems the better Opinion  
were *contra.*

(c) 4 E. 3. pl. 12.

(d) And see accordant per Newton. 21 H.  
6. 22. *vide infra.*

(e) And see accordant 21 H. 6. 41.

(f) *Contra* per *June* and *Paston*. 14 H. 6.  
26.

Note the Case 21 H. 6. 41. *Warranty of*  
*Charters* per *Mills* versus *H. Clifford*, and  
counts that one *R.* had arraigned an Assise  
against him and the others, pending which  
Writ, the Plaintiff came to the Defendant,  
and shewed that he was in by his Feoffment  
with Warranty, and pray'd him to admi-  
nister, *i. e.* to assist him with a Plea to bar  
the Demandant, which he refused; and  
then pleads, that long Time before the  
Defendant any Thing had, *A.* and *B.* were  
seised, till disseised by *C.* who enfeoffed  
the



impleaded, for which he purchaseth a Writ of *Warrantia Chartæ* against whom he hath a Warranty, and vouch him also in the Action; and afterwards depending the Action, a Stranger who hath ancienter Title entrench upon him, yet that shall not abate his *Warrantia Chartæ* sued out before; *quod vi. 21 H. 6.*

- H (a) If a Man be impleaded in Assise, &c. and he bring a Writ of *Warrantia Chartæ*, and counts, that he is impleaded by Assise, &c. and that he hath lost, &c. If the Plaintiff recover his Warranty, he shall recover his Damages, and also to have the Value of the Land lost. 4 E. 2. Gar. Charters 29. it is but a personal Action in the Nature of a
- Covenant, therefore he shall recover Damages. *2 H. 6. 31.* It is holden, that in this Case he shall recover Damages only. But it seemeth by *Br. Warr. Chart. 31.* that if he hath no Land to be recovered in Value, that he shall not recover Damages *tantum*, nor more than in Voucher.

I And a Man may sue forth divers Writs of Warranty of Charters against divers Men: And if he hath divers Warranties against them, he shall recover severally against them.

- K (b) And a Man may sue a Writ of *Warran' Chartæ* at the Common Law for a Warranty made of Lands in ancient Demesne.

S f 2

(a) And

the Defendant, who enfeoffed the Plaintiff as he had alledged, and A. died, and B. entred on the Plaintiff. *Markham* demurred to this Plea, for that it does not shew whether the Entry was before, or pending, or after the Assise, and *22 H. 6. 22.* it was ruled by the Court that it is no Plea, if it does not shew the Entry to be before the Assise brought, or before the Request made: For if the Entry was after Judgment or Request, the Plaintiff is lawfully entitled to an Action: For by *Newton*, the Request is in Nature of a Voucher of a Vouchee, so as to devolve the Warranty (*contra* if it be after the Entry into Warranty) whereupon A. waived the said Plea, and shewed that B. entred on the Plaintiff before any Request; and *Markham* demanded Judgment, seeing that he acknowledges he was Tenant at the Time of the Assise arraigned, and that the Request was pending the Assise, in which Case suppose a Stranger had entred by elder Title, yet against him (Law) the Writ is good, as of the Tenancy he had the Day of the Writ purchased: And by *Newton*, *Passon* and *Fulk.* it was now a good Plea; for although he remained Tenant to the Demandant after the Entry of B. yet he is not so against the Defendant, wherefore they joined Issue, if the Entry was before the Request. *22 H. 6. 22, 23.* and *vide 41. ib.* so that it seems to me, that though the Entry was after the Request,

yet if it was before the Writ of Warranty of Charters purchased, the Entry of the Stranger would oust him of his Warranty; for the Request is not in Lieu of Voucher, but only the Writ of Warranty of Charters; and this is well proved, for that the Lands which the Vouchee has, are bound from the Time of the Voucher; but the Lands of the Tenant in the Warranty of Charters only from the Time of the Writ purchased; yet it seems clearly, that if in an Assise the Defendant requests his Guarantor to give him a Plea and he refuses, and after Judgment is given, &c. that so long as he continues Tenant of the Land he shall have a *Warrantia Chartæ*; but *contra* if he has not made any Request, and according to this Diversity are the Books to be intended. *Register 158.* and *24 E. 3. 75.* because till Execution he continues Tenant, and has his first Warranty still on Foot.

If a Warranty be made to a Man and his Assigns, the Assignee of the Heir of the Feoffee shall vouch as Assignee. *Quod nota, 7 E. 3. Warranty, &c. 44. 10 E. 3. 32. 19 E. 2. 35. 13 E. 1. 93.*

(a) See accordant *4 E. 3. Garranty, &c. 29 E. 3. ibid. 30. and ant. 134. K. Bro. Garranty 31. 16 E. 3. pl. 20. 4 E. 2. pl. 29.*

(b) See *16 E. 3. Cause a remover 15. Reg. 12. 30 E. 3. 13. and per Skipw.* the Tenant shall have Warranty against the Lord in the Lord's own Court.

(a) And if a Man have a Writ of *Warrantia Charta* depending, although that the Plaintiff who brought the Action against him who brought the *Warrantia Charta* be Nonsuit in his Action, the same shall not abate the Writ of *Warrantia Charta* although he hath not an Action sued against him for the Land, &c.

### Writ de Mesne. (b)

18 H. 3.  
Mesne 78.  
adjudged  
that the  
Mesne ought  
to acquit the  
Tenant a-  
gainst all  
Lords Para-  
mount, 29  
E. 3. 34. acc.  
Note, that  
the Plaintiff  
in a Writ of  
Mesne need-  
eth not in  
the Count to

THE Writ of *Mesne* lieth where there is Lord, Mesne, and Tenant, M and each hold by Owelty of Services, as by Homage, Fealty, and 20 l. Rent yearly. Now if the Tenant be distrained by the Lord Paramount for the Rent or Service of the *Mesne* behind, he shall have a Writ of *Mesne* against the Lord who is *Mesne*, and by the Writ he shall recover his Damages if he be distrained, otherwise not : And by that Writ he shall be compelled to do the Service, and to pay the Rents, and the Writ may be sued in the County before the Sheriff, and the Writ is,

(c) *Rex Vic', &c. Præcipimus tibi, quod Justic' A. quod juste, &c. ac-* N  
*quietet B. de servic' quæ C. ab eo exigit de libero tenemento suo quod de*  
*præf. A. tenet in I. & unde querit' quod pro defectu ejus distrin' sicut ra-*  
*tionabil' monstrare poterit, quod eum acquietar' debeat, ne amplius, &c.*

show the Certainty of the Tenure between the Mesne and the Lord Paramount, but generally to say, that he holdeth over per 38 H. 6. 12. and 39 H. 6. 29. 13 E. 4. 6. If there be Lord, Mesne, and Tenant, and the Tenant is distrained by the Lord, for which he bringeth a Replevin, the Lord avoweth upon a Stranger ; the Tenant may have a Writ of Mesne : Yet the Mesne cannot join be- cause the Avowry is made upon a Stranger.

And if it be sued in the Common Pleas, the Writ is,

*Rex Vic', &c. Præc' A. quod juste, &c. acquietet B. de servic' quod nos*  
*ab eo exigimus de libero tenemento, &c. unde idem A. qui medius est inter*  
*nos & præf. B. eum acquietare debet, & unde queritur, quod pro defectu e-*  
*jus distring' & nisi, &c.* And this Writ is where the King distraineth for Services, &c.

And if another Person be Lord Paramount, then the Writ is, *Quod*  
*acquietet B. &c. quæ C. de eo exigit de libero tenemento, &c. unde idem*  
*A. qui medius est inter C. & præf. B. eum acquietare debet, &c.*

And

(a) *Infinite* ; and therefore in a Writ a-  
gainst two, they may fourch per Distress  
in *infinitum*. 38 E. 3. 1. 9 E. 2. pl. 3. 41  
E. 3. pl. 9.

(b) *Note* ; The Writ of Mesne ought to  
be brought in the County where the Lands  
lie, and if *Nihil* be returned against the  
Lord, a Writ shall issue to another Sheriff  
on a *Iestatum*. 29 E. 3. 3.

(c) *Note* ; tho' *A.* does not hold of *C.*  
immediately, but only by a Mesnalty, yet  
the Writ is good ; adjudged 29 E. 3. 34. —  
Also in this Writ the Quantity of the  
Services are taken by Protestation, and  
several Tenancy is a good Plea. 2 H.  
5. 2.



**A** And the Writ of *Mesne* may be sued and removed out of the County, at the Suit of the Plaintiff by a *Pone* without Cause, and at the Suit of the Defendant with Cause shewed, as in a *Replevin*. [136.]

And a Man may have an Acquittal, and sue forth a Writ of *Mesne* upon it divers Ways. One if the *Mesne* grant unto his Tenant by his Deed, upon his Tenure made of him to acquit him against his Lord Paramount, he shall have a Writ of *Mesne* upon that Grant. Another Cause of Acquittal is where he holdeth in Frankalmoigne. Another Cause is, where he holdeth in Frankmarriage (a); or where he holdeth by the like Service as the *Mesne* holdeth over, which is called Owelty (b). 14 E. 3.  
Mesne 7.  
38 H. 6. 12.  
39 H. 6. 29.  
Prisot.

And also a Man may have an Acquittal by Prescription, as if he hold by Homage *Auncestral*.

**D** And also by Conuſance in a Court of Record for to acquit him, &c. And the Men of *Cornwall* claim to plead a Plea in a Writ of *Mesne* in the County without Writ, and that they have had Allowance thereof in Eyre. And although the Writ of *Mesne* be depending betwixt the *Mesne* and the Tenant paravail, yet the Lord shall distrain the Tenant paravail for the Rents and Services, and shall not tarry until the Writ of *Mesne* be ended betwixt them, whether he ought for to acquit the Tenant or no.

**E** (c) And if a Man bring a Writ of *Mesne* where he is not distrained, yet the Writ is maintainable, but then he shall not recover Damages: For the Writ is brought only for to recover the Acquittal, &c. As if he bring a Writ of Warranty of Charters where he is impleaded, &c. he is to recover the Warranty *pro loco & tempore*. 7 H. 4. 12.  
Ant. 134. K.  
Bro. Mesne  
22.

**F** And if the Tenant holdeth by the Services which the *Mesne* holdeth over, and also by other Services, it is a good Owelty to have Acquittal, because it is such, and more. And although that the Lord dieth depending the Writ of *Mesne*, yet the Writ shall not abate (d). 4 H. 6. 25, 28.  
4 E. 4. 35.  
11 H. 4. 55.  
10 H. 6. 26.

**G** (e) And Tenant for Term of Life where the Remainder is over in Fee, shall have a Writ of *Mesne* against the *Mesne*: But Tenant for Life shall not have a Writ of *Mesne* against him in the Reversion. But Tenant 25 H. 6.  
Mesne 12.  
17 E. 3. 19.  
Br. Mesne  
22.

(a) *Nte*; The Issue of the Donee in the fourth Degree shall not have a Writ of *Mesne*, as on a Frankmarriage, but as on a Gift in Tail. 12 H. 4. 9. *W. W.* See 38 H. 6. 12. 11 H. 4. 52. 46 E. 3. 31.

(b) Acquittal by Owelty. See 22 E. 3. he ought to shew Seisin or Tender of the Services, whereof he is acquitted. 30 E. 3. 24. But in such Case, the Plaintiff ought to shew Seisin of the Services in the *Mesne*, either by himself, or his Feofor, &c. and this Seisin is traversable. 18 E. 3. 19. 4 E. 2. *Mesne* 63. See 8 E. 3. 49. 5 E. 3. 56. 11 H. 4. 52. a good Case of Acquittal, that the *Mesne* and his Ancestors had acquitted the Tenant and his Ancestors, and all those whose Estates he hath: Adjudged 27 E. 3. 82.

(c) And therefore it seems, if the *Mesne* pleads not distrained, the Plaintiff shall recover the Acquittal notwithstanding, yet it seems he shall not be amerced, if he comes (not) at the Day. 30 E. 3. 22. 6 E. 4. 7. See 30 E. 3. 29, 30. 31 E. 3. *Judgment* 136. 14 E. 3. *Ibid.* 158.

(d) And 'twas accordingly so adjudged in both Points. 4 H. 6. 27. *Quare*, if there may be a good Forejudger in such Case. 10 H. 6. 26. and it seemed to *Strage* that there should, for the Judgment is no other, but that the *Mesne* shall be forejudged, and that the Tenant shall be attendant *Capitali Domino*.

(e) See accordingly, but then he ought to count according to his Case. See 13 E. 3. *Mesne* 12.

Tenant in Dower shall have a Writ of *Mesne* against him in the Reversion, because she hath her State by the Law.

- 17 E. 3. 15. (a) And if the *Mesne* hath paid the Services unto the Lord Para- H  
 contr. per mount, yet if the Tenant be afterwards distrained for those Services, he  
 Thorp. shall have a Writ of *Mesne*. But it is a Question whether he shall reco-  
 38 H. 6. 12. ver Damages in that Writ. But it seemeth he shall have Damages, be-  
 Prisot. cause the *Mesne* shall recover Damages against the Lord, if he will put  
 50 E. 3. 23. his Cattle in the Pound for the Tenant, and sue a *Replevin*, &c. and  
 10 H. 6. 26. yet not distrained in his Default is a good Plea in a Writ of *Mesne*.  
 34 H. 6. 47. And if he pay the Services, he is not distrained in his Default: For if  
 13 E. 4. 6. the *Mesne* grant unto the Tenant to acquit him after the Tenure made,  
 7 H. 4. 18. he shall have a Writ of *Mesne* thereupon, as I conceive (b).  
 18 E. 3. 19. And the Husband and Wife shall have a Writ of *Mesne* where they are I  
 4 E. 4. 35. distrained for the Lands of the Wife.  
 Billing. acc. (c) If the *Mesne* grant the Mesnalty for Life, and the Tenant attorn, K  
 14 E. 3. the Tenant shall not have a Writ of *Mesne* against the Grantee for Life.  
 Mesne. But Tenant in Tail shall have a Writ of *Mesne*: And ancient Demesne  
 12 E. 3. is a good Plea in a Writ of *Mesne* (d).  
 Mesne 12. And  
 10 E. 3. 58.  
 Ibid. 21.  
 8 E. 3. 26.  
 Mesne 19.

(a) Note; Tho' the Services of the Mesne be not in Arrear, yet a Writ of Mesne lies, because the Tenant cannot plead *Rien arrear*. 39 E. 3. 34. contr. 17 E. 3. 15. See 39 E. 3. 19. 11 H. 4. 52.

(b) Note; A. is Lord, B. Mesne, C. Mesne, and D. Tenant, A. distrains B. for Services, D. brings a Writ of Mesne against C. and recovers, C. brings a Writ of Mesne against B. and counts generally, B. pleads not distrained in his Default, and the other replies contr. and the special Matter is found *ut supra*, and that the Services of B. were in Arrear, but not the Services of C. and 'twas held. (1.) That without some such special Mischief the Tenant in Service, viz. the Mesne shall not have a Writ of Mesne. (2.) That in the Case of such Mischief he shall have it, and so each Mesne shall have it against the other, till it come to him in whom the Default is. 39 E. 3. 34. 39 H. 6. 31. 7 H. 4. 18. accordant. (3.) That there ought to be a special Count. 20 E. 3. Mesne 14. or at least a special Replication, and that on the general Issue found, this Matter shall not aid him. (4.) It seems that the one Mesne shall not recover Damages of the other before Execution, *Ibid.* and 17 E. 3. 44. 18 E. 3. 19. Yet it seems, that notwithstanding the Recovery against C. yet if B. had no Notice of the Distress, or if his Services were not Arrear, a Writ of Mesne does not lie against him by C. no more than it lies against C. without Notice where his Services were not in Arrear.

For in that Case there is no Default in him. See 7 H. 4. 18. Also, if the Mesne's Beasts are impounded for those of the Tenant, he shall have a Replevin of them, and so may each Mesne have, &c. And if any Mesne refuse to do so, *per Cur.* the Tenant shall have a Writ of Mesne. See 10 H. 6. 26. if the Avowry be abatable, or if no Services be due or Arrear; yet if the Mesne will not join with the Tenant on Request, a Writ of Mesne lies, for that the Tenant being a Stranger, shall not plead in Abatement of the Avowry.

(c) See 40 E. 3. 7. 12 E. 3. Mesne 11. contr.

(d) So it is in Account against a Guardian in Socage, and in Replevin. 21 E. 3. 10. yet See in a Writ of Mesne on a Deed of Acquittal by the Tenant, the Defendant alledges that the Lands are held of the Manor of S. which is Antient Demesne, and 'twas not allowed, but he was put to answer to the Deed. 34 E. 1. Antient Demesne 38. But See in a Writ of Mesne by Tenant in Dower, against the Heir who alledges that the Tenements are held of the Manor of C. which is Antient Demesne; and altho' it was said, that one cannot have Process of Forejudging on Proclamations in a Court of Antient Demesne, and that the Heir cannot be distrained there, for he has only the Services, &c. yet 'twas awarded, that he should take nothing, and 'twas said, that this Plea shall be pleaded in a *Petit* Writ of Right in the Lord's Court, and that he shall make Protestation, &c. 28 E. 3. 45. acc. 30 E. 3. 12. *per Skipw.*



- L** And a Writ of *Mesne* lieth against Tenant for Life where the Remainder is over in Fee: And the Writ of *Mesne* shall be maintainable against the Heir of the Mesne where his Ancestors have granted the Services of the Tenant by Fine, if the Tenant hath not attorned according to the Fine: For he shall not be compelled to attorn without granting Acquittal unto him: And if he grant Acquittal, he shall have Writ of *Mesne* upon the Grant; and yet it commenceth after the Tenour. 46 E. 3. 7.  
28 E. 3. 95.  
39 H. 6. 3.  
28 H. 6. 6.
- M** And if the Tenant be distrained for the Relief of the Mesne, or for reasonable Aid, &c. he shall have a Writ of *Mesne* against him. 39 H. 6. 29.  
38 E. 3. 34.  
4 E. 2. Mesne
- N** If a Man be Tenant by the Courtesy of a Mesnalty, &c. if the Tenant be distrained, the Writ of *Mesne* shall be sued against him in the Reversion, and not against the Tenant by the Courtesy. H. 4. E. 2. 52. 14 E. 2.  
Mesne 72.  
contr. and  
Note 84.
- O** A Seigniorship is granted unto the Husband and Wife, and to the Heirs of the Husband, and in a *Per que servitia* sued by them, the Tenant will not attorn, unless they will grant to acquit him, &c. for which the Husband grants for him and his Heirs, to acquit the Tenant and his Heirs, and afterwards the Husband dieth; the Tenant may bring a Writ of *Mesne* against the Husband's Heir, during the Life of the Wife who was Tenant for Life, and good. *Quod Vi. H. 5 E. 3.* contr. 40 E.  
3. 7. 12 E.  
3. Mesne 11.  
Mesne 52.
- P** And in the Time of E. 1. the Tenant brought a Writ of *Mesne*, because he did not acquit him of a Rent-Charge demanded, &c. because he by his Deed bound him and his Heirs to warrant and acquit him, and it was maintainable. Mesne 56.
- Q** And an Abbot sued a Writ of *Mesne*, by Reason of the Confirmation made unto him in *Frankalmoigne*, and it was maintainable. H. 2. E. 2. 5 E. 2.  
Mesne 64.
- R** If a Man have Judgment to recover his Acquittal in a Writ of *Mesne*, if he be not afterwards acquitted, he shall have upon the Recovery a *Distringas ad acquietandum* against the Mesne, if it be three or ten Years after the Judgment given; and that is given by the Statute of *Westminster* 2. cap. 9. And a *Scire facias* against the Lord.  
14 E. 3.  
Mesne 7.
- S** If the Mesne do acknowledge Acquittal by Fine, and after he sueth a *Scire facias* thereupon, and he appeareth not at the Return of the Writ, then shall issue a Writ of *Distringas ad acquietandum*, &c. and an *Alias* and *Pluries*, &c. until he appear; and if he come upon the *Distringas*, and cannot plead any Thing, but that he ought for to acquit him, then the Plaintiff shall recover Damages against him.
- T** (a) And if the Ancestor do acknowledge an Acquittal in a Court of Record, the Tenant shall have a *Scire facias* against the Heir to acquit him without other Specialty, &c. (b). 46 E. 3. 31.  
14 E. 3.  
Mesne 7.
- V** And if a Man recover Acquittal of a Writ of *Mesne*, &c. he shall after have a *Distringas ad acquietandum*, and if he do not appear, he shall 49 E. 3. 31.

(a) But notwithstanding such Acknowledgment of the Acquittal, in a Writ of Mesne against the Heir, he may plead, that he had nothing in the Seigniorship without shewing how, as that it was demised, &c. contr. of his Father who acknowledged, &c. 28 E. 3. 93.  
(b) So it is on a Recovery. 14 E. 3. Mesne 7.

[137.] shall be forejudged by Default of his Mesnalty; and so if he appear, and it be found by Verdict against him, he shall be forejudged (a).  
 46 E. 3. 31. And a Man shall have a Writ of *Mesne* to acquit him of Suit unto A  
 Old. N. B. a Hundred which the *Mesne* ought to do by Reason of his Mesnalty,  
 83. 11 E. 3. and not by Reason of Resnancy, &c. And the Process in a Writ of  
 Br. Suit. 4. *Mesne* is Summons, Attachment, and *Distingas*; and if the Defendant  
 E. 3. 42, 83. hath not any Thing in the County by which he can be distrained, then  
 the Plaintiff may surmise that he hath Assets in another County, and  
 pray a *Distingas* thither, and he shall have it by the Statute; and upon  
 that he shall be forejudged, &c. if he do not appear, and the Writ be  
 served and returned against him. But that is given by the Statute: For  
 at the Common Law he shall not have but Distress infinite in the same  
 County where the Writ was brought, and that is in the County where  
 the Land is; and at this Day he may choose whether he will sue the  
 Process at the Common Law, Distress infinite in the County, or the  
 Process which is given by the Statute, Summons, Attachment, and the  
 grand Distress, which shall have Day to answer by such Times as two  
 Counties may be holden, in which the Sheriff shall make Proclamation  
 that he come to answer the Plaintiff, and if he do not come, and the  
 Writ be returned, then he shall be forejudged.

*Writ*

(a) If the Lord distrains the Mesne for more Services than the Mesne ought to pay, the Mesne is not bound to acquit the Tenant of the Surplusage. 39 H. 6. 31.

See 14 E. 3. *Mesne* 7. A. brings a Writ of Mesne against B. and counts of an Acquittance by Reason of Tenure in Frankalmoign, and Judgment was, that he should recover Damages, and a Precept went to the Sheriff, *quod distringeret B. ad acquietand.* B. dies, a *Scire facias* goes against C. the Heir of B. to have Acquittal, C. not acknowledging that he had the Seigniori at the Time, or that he had any more, &c. pleads, that he has nothing by Descent in Fee from his Father within the same Lands, &c. And Note; the Abbot in the said Recovery counted of Frankalmoign, *unde chartam*, &c. and therein these Points were agreed, viz. (1.) That this Judgment is well enough to warrant a *Scire*

*facias* for the Acquittal. (2.) That no other Process of Execution lies against the Heir than a *Scire facias*, &c. (3.) That the Plaintiff need not shew the Charter whereby he deraigned the Acquittal on the Recovery. (4.) When an Acquittal is granted for one who is not Mesne, 'tis no Cause to have a Writ of Mesne, but only of Covenant. (5.) On an Acquittal which binds the Ancestor by Reason of a Tenure in Frankalmoign, Frank-Marriage, or a Deed whereby the Acquittal is granted, if the Heir has the Mesnalty, he shall be bound to the Acquittal by Writ of Mesne, although he has nothing by Descent in Fee-simple, from him by whom the Acquittal commences. But there it seems he may disclaim in the Mesnalty; *Quare*, wherefore the Abbot had Judgment, &c. and affirmed in a Writ of Error. 15 Aff. 9.



## Writ de Plegiis acquietandis.

**C** **T**HE *Writ de Plegiis acquietandis* lieth, where a Man becomes Pledge or Surety (a) for another to pay a certain Sum of Money at a certain Day, &c. if the Party doth not pay it at the Day, &c. If he who becomes Surety be compelled to pay the Money, he shall have this Writ against him who ought to have paid the same. But it hath been a Question whether this Writ lieth without shewing a Specialty; and it seemeth reasonable that it be maintainable, although he have not any Specialty to prove it. For the Writ as it seemeth is given by the Statute of *Magna Charta*, cap. 8. which is; *Quod si plegii voluerint, habeant terras & tenementa debitoris quousque sit his satisfact' de debito quod antea pro eo solverint.* And there is not spoken of any Writing made betwixt them; and if he have a Writing, then he may have Remedy thereupon by the Common Law, or by the Writ of Covenant, or Debt; and then that Statute needed not to have been made. And *Pasch.* 43 E. 3. 10. it is adjudged, that the *Writ de Plegiis acquietandis* lieth without any Specialty shewed thereof, and it seemeth good Reason: Because the Statute makes the Tie in that Case, and that appeareth by the Register, because Writs are given for the Executors of him who became Pledge, and against him who was the Debtor, because their Testator did not acquit his Sureties, &c. And this Writ is *Vicontiel*, and may be sued in the Country before the Sheriff, or in the Common Pleas by a *Præcipe*. And the Form of the Writ is such:

*Rex Vic', &c. Præcipimus tibi, qd' Justicies A. qd' juste, &c. acquiet' B. de 20 s. unde posuit se in plegium versus C. & eum nondum acquietavit, ut dic' sicut rationabilit' monstrare poterit, quod eum inde acquietare debeat, ne amplius, &c. pro defectu Just', &c.* And the Form of the Writ for the Common Pleas is such: *Rex, &c. Præcipe A. quod juste, &c. acquietet B. de cent' marcis, unde posuit se in pleg' versus C. & eum nondum acquietavit, ut dic', &c. & nisi, &c. Vel sic pro Executoribus, quod acquietet B. & C. execut' testamenti D. de 10 li' unde posuit prædict' D. in pleg' versus, &c. & eos nondum, &c. Vel sic versus Executores, Præc' A. & B. &c. execut' testamenti, &c. qd' juste, &c. acquietent E. de, &c. unde idem E. posuit se in pleg' versus D. & eum nondum, &c.*

**E** And if a Man become Surety for another in the Exchequer to account for him, and doth not, he shall have Writ against him to discharge him of the Account, and the Writ is:

*Rex, &c. De acquietando A. de quodam compoto quem præd' B. pro se de tempore quo idem A. fuit ball' libertatis If. reginæ Angl' matris nostr' in*

T t

com'

(a) So if *A* and *B*. are bound to *C*. *conjunctim & divisim* for the Debt of *A*. yet seeing *B*. is not named Pledge, or *fidei jussor* in the Obligation, this Writ does not lie for *B*. for both are Principals. *Pasf.* 22. *Rot.* 1. See *Dyer* 257. and 370. accordant; yet a Jury may find *quod posuit se in pleg'* for the Defendant against the Debtee.

Sec 122 K.  
43 E. 3. 11.

Vi. 22 Eliz.  
Dyer 378.  
2 Inst. 20.  
contr.

Fitz. Pledges  
9. there it  
was alledg-  
ed that the  
Custom of  
London was  
such.  
43 E. 3. 11.

com' D. coram Theſaur' & Baron' noſtris de Scac' reddere manucepit, & poſuit eum in pleg' verſus nos in Scac' præd' & eum nondum acquietavit, &c.

Vi. 39 E. 3. 9. (a) And if a Man become Surety for another to pay a certain Sum F  
by *Knivet. Br.* of Money, or to do other thing, &c. ſo long as the Principal Debtor  
Pledges 22. hath any Thing and is ſufficient, his Sureties ſhall not be diſtrained by  
The Plain- the Statute of *Magna Charta* : And if they be diſtrained by the Sheriff,  
tiff ought to &c. they ſhall have a ſpecial Writ upon the Statute for to diſcharge  
have the them. And the Writ ſhall be ſuch : 39 E. 3. 9. 40 E. 3. 5.  
Writ firſt  
againſt the  
Party ; and  
if he be in-  
ſufficient,  
then againſt  
the Pledges.  
Mag. Char-  
ta cap. 8.

*Rex Vic', &c. Monſtraverunt nobis A. & B. quod eum ipſi deveniſſent pleg' C. verſus D. de quadam ſumm' pecun' in qua idem C. præfat' D. tenebatur, ac idem C. ſatis habeat, unde prædict' debitum ſolveret, tu nihilominus ipſos A. & B. diſtring' ad ſolvend' præf. D. pecuniam prædict'. Et quia injuſtum eſt, quod plegii aliqui ad ſolution' debiti compellant' quamdiu principales debitores ſufficient' habeant unde debitum ſuum reddere poſſunt, Tibi præcipimus, qd' C. diſtring' ad præd' pecuniam ſolvend' & præf. pleg' ſuos pacem inde habere permittas & averia ſua, ſi quæ ea occaſione ceperis, ſine dilatione deliberari facias. Teſte, &c.*

And it ſeemeth that this Writ lieth where a Man recovereth againſt the Sureties in the County, and the Sheriff diſtrains them to pay the Debt, where the Principal is ſufficient : But if he ſue the Sureties in the Common Pleas, where the Principal is ſufficient to pay the Debt, &c. Now whether the Sureties may plead that, and aver that the Principal Debtor is ſufficient to pay it ; or whether they ſhall have a Writ to the Sheriff not to diſtrain them, if the Principal be ſufficient, *Quære* of theſe Caſes. And the Proceſs in the Writ is Summons, Attachment and Diſtreſs, &c. (b).

39 E. 3. 9.  
40 E. 3. 5.

## Writ of Detinue.

[138.]  
13 E. 3. De-  
tinue 55.  
9 H. 6. 58.

A Writ of *Detinue* lieth, in Caſe, where a Man delivereth Goods or A  
Chartels unto another to keep, and afterwards he will not deliver them back again ; then he ſhall have an Action of *Detinue* of thoſe Goods and Chattels ; and ſo if a Man deliver Goods or Money put up in (c) Bags, or in a Cheſt, or in a Cupboard, unto another to keep, and

(a) See *Mag. Chart. c. 8. 11 E. 2. Debt* 172. 39 E. 3. 9. yet he ſhall not have this Advantage where he binds himſelf in Covenant. 48 E. 1. 51. *contr.* and yet he is Principal by *Perk* 33.

(b) And *Note* a Judgment in this Writ, *Queda u ctur*, and Damages aſſeſ'd by the Court on Confeſſion. *Dyer* 257.

(c) See 29 E. 3. 20. accordant, *Detinue* lies for a Bag and 100 l. in *eadem бага*, without ſaying that it was enſealed ; adjudged 18 H. 6. 20.

And *Note* ; If *Detinue* be brought of a Cheſt enſealed with Charters, there, for that the Court cannot be apprized by the Writ, whether they concern the Realty or not, Proceſs ſhall be made by *Capias*, &c. but when the Party appears, and counts, whereby it appears to the Court, that the Charters do concern the Realty, then he ſhall be permitted to appear by Attorney, &c. 29 E. 3. 19. 7 H. 4. 2. and 21 H. 6. 42. accordant, with this Diverſity. See 8 H. 6. 30. If one bring *Detinue* of a  
Cheſt



and he will not redeliver the Goods or the Money in the Bags; he to whom they should be delivered shall have a Writ of *Detinue* for those Goods, &c. But if a Man deliver Money not in any Bag or Chest, to redeliver back, or to deliver over unto a Stranger; now he to whom the Money shall be delivered, shall not have an Action of *Detinue* for the Money, but a Writ of Account; because *Detinue* ought to be of a Thing which is certain; as of Money in Bags, or of a Horse, or of a hundred Cows, or such certain Things. And this Writ may be *vicon-*  
*trict*, and shall be sued before the Sheriff in the County if the Plaintiff please; or he may sue it in the Common Pleas; and the Form of the Writ in the Common Pleas is,

If a Man bail a Thing to bail to I. S. he shall have Detin', by *Prisot*, yet he hath no Property till Agreement, 39 H. 6. 44. Laiton, contr. 7 H. 4. 13. *Detinue* was brought of a

Bag with 20 l. and by *Martin*, 4 H. 6. 1 and 2. If a Man bail 20 l. to rebail, *Detinue* lieth, and accompt. Contr. if it were per accompt rendre. 6 E. 4. 11. *Detinue* of four Quarters of Barley, and doth not lay in Sacks; and yet good.

*Rex Vic', &c. Prac' A. &c. qd', &c. redd' B. unam chartam quam ei injuste detinet, ut dicit, & nisi, &c. Vel sic, quod redd' B. unam pixidem cum tribus scriptis obligat' in eadem pixide contentis sub sigillo predict' B. consignat'.* And the Rule in the Register is, *quod in brevi de Chartis reddendis semper debet poni cert' numerus Chartar' vel scriptor'.* And a Man may have a Writ of *Detinue* of one Writing, and the Writ shall be, *Prac' A. qd' &c. redd' B. quoddam scriptum, per quod B. omnia bona & catall' sua in manerio de N. nuper exist' I. de L. dedit & concessit, qd' ei injuste, &c.* And the Form of the Writ in the Count is such: *Rex Vic', &c. Prac' tibi, quid justicies A. quod juste, &c. redd' B. unam Chartam, vel tres Chartas, vel unum (b) scriptum obl' vel conventionale, vel acquietan' vel testam' vel chirographum, quod quas vel quæ ei injuste detinet, ut dicit, sicut rationabilit' monstrare poterit, quod ei ea redd' debeat ne amplius, &c.*

Note, that in 21 H. 6. 29. the Writ was *Reddat bona & catalla*; and declares of three Deeds; contr. if of 3 Obligations. 19 E. 3. *Detinue* 49. The Writ was *Unam Chartam*, and the Count of a Confirmation.

C And if a Man sue in any Court a Plaint of *Detinue* for any Charters which touch and concern Freehold, if it be not in the Common Pleas by the King's Writ, the Defendant may sue a Prohibition, to prohibit them, &c. and to surcease, &c.

*Rex ball' I. de R. sal'. Cum placita de detentione chartarum seu scriptorum liberum tenementum tangen' in aliquibus cur' quæ record' non habent, secundum legem & consuetud' Regni nostri sine brevi nostro placitari non debeant, ac W. B. de eo quod idem B. redd' præfat' W. tres Chartas coram vobis in cur' predict' Dom' vestri de R. sine brevi nostro implacitet, ut accipimus, vobis præcipimus, quod si ita est, tunc placito illo coram vobis in curia predict' sine brevi nostr' ulterius tenend' supersedeatis omnino, & præf.*

T t 2

W. dicatis

Chest with Charters, he ought to count that the Chest was locked, for otherwise he shall have a general Writ of Charters. 39 E. 3. 7. contr. 14 H. 4. 30. and then if it be not a Chest locked, he ought to shew what Charters specially. 11 H. 6. 9, 49. 14 H. 6. 4. See 14 H. 6. 1. the Defendant came in by Exigent, the Plaintiff counts of a Chest with Charters, and of

one Charter in special, the Defendant pleads to the Charter *non Detinet*, and to the Residue wages his Law instantly, and then was permitted to make an Attorney.

(a) Note; The Writ may be *Bona & catalla*, and he may count of 3 Tallies; but if he counts of an Obligation, the Writ ought to be special. 21 H. 6. 29.

W. dicatis ex parte nostra, qd' breve nostrum de detentione chartarum prædict' versus præf. B. sibi impetret, si sibi viderit expedire. Teste, &c.

And the Plea may be removed by *Pone* out of the County at the Defendant's Suit, without Cause shewed in the Writ; and at the Suit of the Defendant he ought to shew Cause in the *Pone*: And this Clause shall be in the End of the Writ, *Fiat executio istius brevis, si causa sit vera, aliter non, &c.*

38 H. 6. 24.  
25. Lit.

And if a Man find my Goods which I have lost, I shall have a Writ of *Detinue* of them.

39 H. 6. 24.  
9 E. 4. 52.

And if a Man giveth Lands in Tail by Deed indented, and the Donee Feieth without Heir, the Donor shall have a Writ of *Detinue* for that Part of the Deed indented which the Donee had. 18 E. 3. *Detinue* 48.

31 H. 6. 13. 6 H. 7. 3.

And so if Lands be given to two Men and the Heirs of one of them; if the Tenant for Life dieth, he who hath the Fee shall have a Writ of *Detinue* for that Deed.

7 E. 4. 20.  
26. Moiety.  
18 E. 4. 14.  
the Feoffee  
shall not  
have this  
Writ against  
a Stranger.

(a) If a Man make a Feoffment in Fee of his Land by Deed, yet the Feoffee shall not have the Charters concerning the Land, but the Feoffor shall keep them, if he do not give them to the Feoffee; but against a Stranger the Feoffee shall have an Action of *Detinue* for those Charters which concern the Lands, if he cannot make Title by the Feoffor, or those who claim Title by the Feoffor.

10 E. 4. 9.  
4 H. 7. 10.  
9 E. 4. 52.

And the Heir in Tail shall have a Writ of *Detinue* against the Discontinuee for the Deed of Entail by which the Land was given. 18 E. 4. 15. 44 E. 3. 1. 10 E. 4. 9.

9 H. 6. 58.  
The Heir  
ought to  
make Title  
to the Land,  
otherwise  
the Executors  
shall  
have them.  
19 H. 6. 41.  
acc.

And if a Man maketh a Feoffment in Fee of the Land which is Fee-simple, his Heir shall have the Charters which concern the same Lands, and not the Executors of the Father. 9 E. 4. 53. 10 E. 4. 9.

9 E. 4. 52.

If a Man make a Lease for Years and afterwards confirms his Estate in Fee, the Heir of the Feoffee shall have the Deed of the Lessor for Years, as well as the Deed of Confirmation, because that the Deed doth make the Confirmation good: And so of every Deed which maketh his Title, or a Release, or the like, without which his Title shall not be sure, and he shall have an Action of *Detinue* for them.

9 E. 4. 53.

And the Heir shall have a *Detinue* of Charters, although he hath not the Land; as if I be enfeoffed with Warranty, and I enfeoff another with a Warranty in Fee, my Heir shall have a *Detinue* of that Deed by which I am enfeoffed, because he may have Advantage of the Warranty.

9 E. 4. 53.

10 E. 4. 14.  
The Lord by  
Escheat shall  
have Detin'  
for Charters.

And if my Father be disseised, and dieth, I shall have a *Detinue* for the Charters, although I have not the Land, and the Executors shall not have the Action for them.

And

(a) See one Parcener may have the Charters which concern her Purparty only, and shall have *Detinue* thereof against her Sister on a special Count. See also in *Detinue* of Charters by two, if the Defendant delivers them to one of them, tho' out of Court, he shall be excused against the other, and so in Dower against two, who plead *Detinue* of Charters. 21 E. 3. 8. per Manby.



**M** And if a Man have Goods delivered to him to deliver over to another, and afterwards a Writ of *Detinue* is brought against him by him who hath Right unto the Goods; now if the Defendant, depending the Action, deliver the Goods over to whom they were bailed to him for to deliver, the same is a good Bar in the Action, because he hath delivered them according to the Bailment made unto him.

[139.]

**A** And after Divorce made betwixt the Husband and the Wife, the Wife shall have a Writ of *Detinue* for the Goods given with her in *Frank-marriage*, which see *M. 35 E. 1.* And the Proceſs in *Detinue* is Summons, Attachment and Distress.

For *Detinue* 61. 13 H. 3.  
Prohibition 21.  
See 44. C.

*Writ de Recto de Custodia terra & heredis.*

**B** **T**HE Writ de *Custodia Terræ & Heredis* lieth where the Tenant holdeth of his Lord by Knight's Service, and dieth in his Homage, and a Stranger entreth into the Land, and taketh the Body of the Heir: The Lord of whom he holdeth the Land shall have a Writ of *Custodia Terræ & heredis*; and the Writ is such: (a)

*Rex Vic', &c. Præc' A. quod, &c. redd' B. custod' terr' & hæred' C. quæ ad ipsum B. pertinet, eo qu' præd' C. terr' suam de eo tenuit per servitium militare, ut dic', &c. & nisi, &c.*

(b) *Aliter de hæred' terr'. Præc' A. qd', &c. redd' B. & C. uxor' ejus W. filium & hæred' E. cujus custodia ad ipsos B. & C. pertinet, eo qd' pd' E. terram suam de præf. C. &c. Vel sic: de L. patre pd' C. cujus heres ipse est & tenuit per servitium militare, ut dicit, &c. & nisi, &c.*

**C** And a Writ of the Lands (c) only is such: *Præc' A. qd' &c. redd' B. custod' unius virgat' terr' cum pertinet in R. quæ ad ipsum pertinet, eo quod C. terram illam de eo tenuit per servitium militare, ut dic', &c. Vel sic, ratione dimission' quæ ad ipsum B. pertinet quam A. de quo prædict' C. terram illam tenuit per servic' militare, inde fecit eid' B. ut dicit, &c.*

And

(a) And *Note*; This Writ lies against a Guardian by Nurture, or the Grantee of a Ward at Will. See 24 E. 3. 96. yet it does not lie against the Grantee of a Ward for Years, if it be not he who first abates. 28 E. 3. 96. it lies against him who claims as Bailiff. 38 E. 3. 18. it lies against a Guardian for Nurture, in case there is not any Guardian in Chivalry; but if one seised as Guardian in Chivalry, grants him, (*i. e.* the Ward) over to B. to be nurtured, it does not lie against B. 12 H. 4. 19. *Non-Tenure* of the Body is a good Plea in a Writ of Ward of the Body. 10 H. 6. 12.

(b) *Note*; This Writ ought to be brought where the Lands lie. 29 E. 3. 3. and if the

Defendant has nothing in the same County, the Plaintiff shall have a *Distingas* (after a *Testatum*) into any other County, and Nonage of the Heir shall not be inserted in the Writ, but in the Count. 12 H. 4. 16, &c. and if the Heir comes of Age pending the Writ, or dies, yet the Writ shall not abate, *Quare*. 40 E. 3. Brief 776. 34 E. 1. Brief 853. 9 E. 4. 50. 40 E. 3. 7. 21 E. 3. 42. 15 E. 3. Brief 680. *Perk.* 13.

(c) *Note*; A Writ of Ward of Lands for several Parcels, of several Tenures shall abate, by *Rolf*; for he ought to have several Writs. 3 H. 6. 53. *contr.* in a Writ of Ward of the Body, or of the Lands; adjudged, *Ibid.* But if it be for the Land, and

And if a Man have a Wardship by Reason of a Ward, and it is taken D from him, the Writ shall be thus: *Quod reddat B. J. filium & hered' C. cujus custodia ad ipsum pertinet ratione custod' terr' & hered' R. de quo prædict' C. terram illam tenuit per servic' militare, inde fecit eid' B. ut dicit, &c.*

(a) And if the Lord Paramount will shew a Writ of Right of Ward E for the Services and Rent, and the Heir of the Mesne, he may have a general Writ of the Land and Heir, if he will, or a special Writ thus:

*Præcipe A. qd', &c. reddat B. custodiam decem solid' redditus, & hæred' C. quæ ad ipsum pertinet, eo quod prædict' C. tenementum unde redditus ille provenit de eo tenuit per servitium militare, ut dicit.*

And this Writ may be sued in the County before the Sheriff by a P *Justicies*, and then the Writ is such:

*Præcipimus tibi, qd' justicies A. quod reddat B. custodiam terr' & hæred' C. quæ, &c. ut dicit, sicut rationabiliter, &c.*

And the Plaintiff may remove the same by a *Pone* without Cause G shewed, and the Defendant ought for to shew Cause in the *Pone*, as he shall do in a *Replevin*. 11 H. 2. *Gard*. 141.

Infra I.

And it appeareth by the Register, that the Guardian in Socage shall H have the Writ of Right of Ward of the Heir alone, or of the Land alone, or of both; for the Heir thus:

*Rex, &c. Præc' A. quod, &c. redd' B. W. filium & hæred' C. cujus custod' ad ipsum B. pertinet, eo quod prædict' C. terram suam tenuit in socagio, & prædict' B. propinquior est hæres ipsius C. ut dicit.*

And there is the like Writ for the Land. And the Reason and Cause that he shall have this Writ seemeth to be, because that for the Land I cannot have other Remedy, if he cannot enter into the Land: And yet I conceive that Guardian in Socage shall have a Writ of Right of Ward for the Land, because he is accountable unto the Heir for the same, which proves he hath no Right unto the Land, but as Bailiff.

Infra I.

And the Guardian in Socage shall have a Writ of Ward for Cause of Wardship, where his Guardian ought to have another Infant in Ward, because he is next of Blood unto him to whom the Inheritance cannot descend; and the Writ is such:

*Rex, &c. Præc' A. quod, &c. red' B. custodiam terr' & hæred' C. quod ad ipsum B. pertinet ratione custodiæ J. filie & hæred' D. qui terram suam tenuit in socagio, in manu ipsius B. existen', eo quod præd' B. terram suam tenuit*

and also for the Body, and the Count is of several Tenures, the Writ shall abate. 46 E. 3. *Brief* 619. 17 H. 6. *Guard* 117. 6 E. 4. 48.

Note; The Writ is general, and therefore the Plaintiff may abridge his Demand. 14 H. 6. 3.

(a) Note; And See 13 E. 3. *Gard* 38. 19 E. 3. *Gard* 40. 1 H. 4. 2. 11 H. 4. 82. 8 E. 3. 8. Ejectment, Intrusion or Right of Ward brought, supposing that he held the Rent of him, and good. See 22 E. 3. 10.

he may have a Writ *de Custodia Terræ & Hæredis*, and count of the Land and Rent, &c. See 10 H. 6. 12. a Supposal (or Demand) of Rent held good; for by *Baldw.* If the King grants a Rent-charge to B. to be held of him, and after grants the Services to C. now B. holds the Rent of C. See 14 H. 6. 24.

See a general Writ for the Wardship of the Heir of *Cesny que Use*, and a special Count. *Dyer* 84 a.



*tenuit in socagio, & prædict' B. propinquior est hæres ipsius J. ut dicit, Et nisi, &c.*

I (a) And it seemeth, that a Writ of Right, *De communi custodia*, was at the Common Law, and as well for Guardian in Socage for the Body of the Heir, as for Guardian in Knight's Service. But the Writ of Ravishment of Ward was not at the Common Law for the Guardian in Knight's Service, but the same was given by the Statute of *Westm. 2. cap. 35.* And by the Equity of that Statute Guardian in Socage shall have a Writ of Ravishment of Ward as well as Guardian by Knight's Service; and by the same Reason he shall have a Writ of Right of Ward at the Common Law, as Guardian in Socage shall have.

K And if the Mesne hath two Daughters, one within Age, and the other of full Age, and dieth; and the Lord hath the Wardship of her within Age, and afterwards the Tenant dieth, his Heir within Age, now the Lord Paramount, and the Sister of full Age who is one of the Mesnes, shall have a Writ of Right of Ward in this Form:

*Præc' A. &c. quod, &c. reddat B. uni filiar' & hæredum W. & P. de E. custodiam terræ & hæred' R. quod ad ipsos B. & P. pertinet, eo quod præd' R. terram suam de præf' B. & M. soror' ejusdem B. alter' fil' & hæred' ejusdem W. infra ætatem, & in custodia prædict' P. existen', tenuit per servitium militare, ut dicunt, & nisi, &c.*

L And it appeareth in the Register, that the Writ *De Ejectione Custodie* lieth for the Land, and for the Heir together, for the Writ is such: (b)

Land only, the Party must shew the Certainty of the Land; but if it be of the Body and Land, the Writ general, *de terris & hæred.* is good. 22 Eliz. Dyer 299. It lieth not but of Land only.

*Rex Vic', &c. Si A. fecerit, &c. tunc sum', &c. B. ostensur' quare, cum custodia terræ & hæred' C. usque ad legitim' ætatem hæc præd' ad ipsum A. pertineat, eo quod idem C. terram suam de eo tenuit per servitium (c) militare, ac idem A. in plena & pacifica seifina ejusdem custodie diu extiterit, prædict' B. prædict' hæred' infra ætatem existen' ipsum A. a custodia illa violent' ejecit, ut dicit, & habeas ibi sum' & hoc breve, &c.*

and yet the Party shall recover Land to his Writ. 12 H. 4. 10. by *Hankford*; so if one eject the Ejector, he who was first ejected shall not have this Writ, no more than one shall have *Trespass, &c.* against the second Trespassor. 39 Aff. 2.

### (a) Another

(a) And he shall account to the Heir for the Damages which he recovers, and for that the Deforfeor shall be discharged against the Heir. 27 E. 3. 79. See *Kekw.* 131.

(b) See the contrary adjudged, 14 E. 3. Brief 316.

(c) Yet 'tis not sufficient for the Defendant to traverse the Tenure, &c. without shewing Cause of Justification. 10 H. 6. 20. per *Pafton*.

Note; If the Bailly of A. ejects B. to the

Use of A. and afterward A. agrees and takes the Profits and aliens, he shall be said the Ejector, and Ejectment *de Gard* lies against him, and the Plaintiff shall recover the Ward and his Damages. 38 E. 3. 18. Ejectment *de Gard* brought against two, the Death of the one shall not abate the Writ. 12 H. 4. 10. The Tenant of the Ward ought to be named in the Writ. 2 E. 2. 779. *Quare.*

[140.] If he who ejects aliens to another, yet he may have this Writ against him who ejected him,

1 E. 3. 20.  
26 E. 3. 65.  
25 E. 3. 52.  
17 R. 2.  
Brief 634.  
N. B. 95.  
3 E. 2. Gard.  
133.

12 R. 2.  
Gard 106.

11 H. 4. 64.  
65. If the Ejectment of Ward be brought of

(a) Another Writ for the Land only, where he hath the same by A Grant of the Guardian, thus :

*Rex Vic', &c. Si A. fecerit, &c. tunc sum', &c. quare, cum custodia unius virgati terre cum pertin' in D. usque ad legitimam aetatem J. fil' & haered' C. ad ipsum A. pertineat, ratione dimissionis quam R. de quo praedict' C. terram suam tenuit per servit' militare inde fecit eidem A. ut dicitur, ac idem A. in plena & pacifica seifina ejusdem custod' diu extiterit, idem B. haered' praedict' infra aetat' existen' praed' A. a custod' praed' violenter ejecit, (b) ut dicit, &c.*

Another Writ when a Man hath a Ward of the King's Grant, B and he granteth the same over unto another, then thus, as above :

*Ratione dimissionis, quam C. qui custod' illam habuit ex commission' Dom' Ed' nuper Regis Angliae, praedeceff. nostri, de quo praed' R. terram suam tenuit per servitium militare, inde fecit eidem B. &c. ac eidem, &c. Or thus, Si B. fecer', &c. tunc sum' B. respondend' (c) tam nobis quam praefat' G. quare cum nos commiserimus praef. E. custod' terr' & tene-ment' quae fuer' J. de C. defuncti, qui de nobis tenuit in capite, & quae ratione minoris aetat' P. consang' & haered' praedict' J. in manum nostram extiterunt, habend' cum omnibus ad custod' ill' spectantibus usque ad legit' aetat' haered' praedict', & idem E. in plena & pacifica seifina ejusdem B. custod' praetext' commiss. nostr' praed' diu extitisset, idem B. haered' praef. infra aetat' existen' praed' A. a custod' cent' solid' redditus cum pertin' in H. inde violenter ejecit, ut dicit, &c.*

13 H. 4. 17.

(d) And the Guardian in Socage shall have a Writ *De Ejectione Custod'*, as appeareth by the Register ; and by the like Reason, as well as he shall have a Writ of Ravishment of Ward for the Body, he shall have a Writ of Ejectment of Ward for the Land (e).

And if a Man have the Patronage of an Abbey or Priory, and hath D Right to have the Temporalties during the Time of Vacation of them, if he have the Possession thereof, and be ousted, he shall have a Writ *de Ejectione Custodiae* ; and the Writ shall be such :

*Ostensur' quare, cum custod' priorat' de B. ad ipsum A. in vacationibus ejusdem prioratus pertineat, ac idem A. in plena & pacifica seifina ejusdem custodia in ultim' vacatione ejusdem custod' in ultima vacatione prioratus praedict' diu extiterit, praed' B. praef. A. a custodia illa violenter ejecit, &c.*

And by the Register it is said, that the Writ of Right may be sued *De Custodia Priorat'* in Time of Vacation, &c. thus :

*Rex, &c. Praec', &c. quod, &c. redd' B. custodiam Prioratus de N. &c.*

(a) And

(a) Note ; The Writ *de Custod. Terrae & Haeredis* is general, but *de Custod. Terrae tantum* is special. 11 H. 4. 64.

(b) *Et blada sua cepit, &c.* abated the Writ, because it included Trespass. 11 E. 3. Brief 471.

(c) He shall have a general Ejectment of Ward, and not a special Writ on the

Case, which concludes in *contemptum nostrum, &c.* and such a Writ shall abate. 11 H. 4. 65.

(d) And so is 26 E. 3. 65. 13 H. 4. 17. and Note ; 'tis there held to be no Issue, to say that the Ancestor did not hold of him whom the Plaintiff supposes to be Lord.

(e) See *contr.* 16 E. 3. *Wast* 100.



(a) And that is grounded upon the Statute of *Magna Charta* cap. 6.

*Quod omnes Patroni Abbatiarum, &c.*

And there is another Writ of Ward for the Body, which is called a *Writ of Ravishment of Ward*: And that Writ lieth as well for Guardian in Socage, as for Guardian in Knight's Service.

E And if a Man have one in Ward because his Ancestor held of him by Knight's Service, and the Ward is ravished and taken from him; he shall have that Writ of Ravishment of Ward.

F (b) And so shall the Grantee of the Ward, or his Executors, if he be taken from them; and the Form of the Writ for the Lord of whom the Ancestor of the Ward held, is such:

*Rex Vic', &c. salut'. Si A. fecerit, &c. tunc pone, &c. B. quod sit coram Justiciariis nostris, vel coram nobis tali die, ubicunque, &c. ostensur' quare J. fil' & hæred' C. infra ætatem existent' cujus maritagium ad ipsum A. pertinet, apud N. inventum, rapuit & abduxit, contra voluntatem ipsius A. & contra pacem (c) nostram, & interim diligenter inquiras, ubi hæres ille sit in balliva tua, & ipsum, ubicunque fuerit inventus, cap. & salvo & secur' custod' ita quod eum habeas coram præf. Justic' nostris. Or thus, Coram nobis, &c. ad præf. terminum ad redd' cui præd' A. & B. reddi debeat, & habeas, &c.*

(d) And if the Heir be ravished and carried from County to County, then the Writ shall be thus:

*Rex Vic', &c. Quest' est nobis A. quod B. C. fil' & hæred' L. infra ætat' existent' & in custodia sua existent' apud E. in Com' Linc' rapuit, & de Com' illo usque I. in Com' tuo abduxit, contra volunt' ipsius A. & contra pacem nostram; & item tibi præcipimus, quod prædict' hæred' ubicunque in balliva tua inven' poteris, capias & salvo & secur' custodias, ita quod eum habeas coram Justic' nostris apud, &c. tali die, quem diem idem A. habet ver' præfat' B. ad redd' cui de jure reddi debeat, & habeas, &c.*

G And the Form of the Writ for the Guardian in Socage is thus:

*Rex, &c. Si A. fecerit, &c. tunc pone, &c. B. &c. quare, cum custodia terr' & hæred' C. usque ad legitimam ætatem ipsius hæredis ad ipsum A. pertineat, eo quod prædict' C. terram suam tenuit (e) in socagio, & prædict' A. propinquior est hæres ipsius C. ac idem A. in plena, &c. diu extiterit, prædict' W. B. filium & hæredem prædict' C. infra ætatem & in custodia ipsius*

U u

(a) See that a Writ of Trespass for a Ward was at Common Law, and at this Day 'tis in the Plaintiff's Election to pursue the Statute or the Common Law, as by a Writ of *Oyer and Terminer*. 29 E. 3. 37. adjudged. See 29 Aff. 35.

(b) Note; In Ravishment of Ward, the Defendant may traverse, but not without making a Title in himself, when put out of Possession. See 9 H. 6. 10. 61. otherwise, if he pleads only to Writ without saying, *Et in Custodia sua existen'*. 9 H. 6. 6.

(c) Without saying *vi & armis*, i. e. if the Writ be *cujus Maritagium ad ipsum pertinet ratione Dimissionis*; contr. if it be ac-

cording to the Statute, there the Writ is good. 17 E. 3. Brief 823.

(d) So Note; The original Writ ought to be brought in the County where the Ravishment is supposed, and not in the County to which he is esloigned, and this Writ shall issue to the Sheriff. Dyer 289. Fitzb. Case; see the Stat.

(e) Without saying *cujus Maritagium ad ipsum pertinet*, as 7 R. 2. Brief 634. and yet if he be married by the Ravisher, there shall be a Recovery of the Value, and he shall be accountable to the Heir for the same. 26 E. 3. 65.

[141.]

*ipsius A. exist' apud N. invent' vi & armis cepit & abduxit, & alia enormia ei intulit, ad grave damnum ipsius A. & contra pacem nostram. Et habeas ibi nomina pleg' & hoc breve. Teste, &c. vel sic: Vi & armis rapuit, & ipsum sine licentia & voluntate ipsius A. maritavit ad grave damnum, &c.*

And if the Infant be in the Custody of the Lord, and during his A Nonage he enter upon the Lord, and oust him of the Land which he ought to have in Ward, then the Lord shall have a Writ of Intrusion of Ward against him; and the Writ shall be such:

*Rex Vic', &c. Si A. fecerit, &c. tunc sum', &c. I. filium & hered' C. B ostens. quare, cum custod' ad ipsum A. usque ad legitimam ætatem hered' prædict' pertineat ratione dimissionis quam L. de quo prædict' C. terram suam tenuit per servitium militare, inde fecit præfat. A. & que A. in plena & pacifica seissina, &c. extiterit, prædict' I. infra ætatem existens, se in terram prædict' intrusit, & custodiam illam præfat. A. detinet, ad dampnum ipsius A. non modicum & gravamen, &c. ut dicit, &c. Et habeas, &c. Vel sic: Ostens. quare cum custodia manerii de T. cum pertin' usque ad legitimam ætatem præd' I. ad ipsum A. pertinuisse ratione dimissionis, quam B. cui H. de quo & Alice uxor' ejus præd' C. Manerium illud tenuit per servitium militare, illud dimisit, inde fecit præf. A. &c. ac idem A. in plena, &c. præd' I. dum infra ætatem fuit, se in manerium prædictum intrusit, & custod' illam præfat. A. hucusque detinuit, ad dampnum, ut dicit, & habeas, &c.*

And the Writ lieth where the Tenant holdeth of a Man and his C Wife by Knight's Service in the Right of the Wife, and the Tenant dieth, his Heir within Age, and the Husband granteth the Wardship of the Land unto another who granteth it over to another, upon whom the Heir intrudeth, &c.

2 H. 7. 9.  
31 Aff. 26.  
Br. Assise,  
321.

Vid. 8 Eliz.  
Dyer 255.  
the Tender  
traversed.

And if the Lord have the Custody of the Heir within Age and tender D him a convenient Marriage, and he refuseth it and intrudeth, then the Lord shall have a Writ against him for to recover the (a) Value of the Marriage, and also to recover the Land, which shall be such:

*Rex Vic', &c. Si A. fecerit, &c. tunc summ', &c. B. &c. ostens. quare cum maritagium prædict' B. ad ipsum A. pertineat, eo quod prædict' B. terram suam de eo tenuit per servitium militare, & idem A. prædict' B. dum fuit infra ætatem in custodia sua competens maritagium absque disparagatione, juxta formam statuti de communi concilio regni nostri inde provisi, sæpius obtulerit, idem B. maritagium illud renuens præf. A. de maritagio suo non satisfacto se in Terris & Tenementis intrusit, & de maritagio suo contradicit, &c. ad grave dampnum, &c.*

24 H. 3.  
Ward 149.

And it appeareth by the Writs abovesaid, That the Guardian shall E have a Writ of Intrusion of Ward against the Heir as well at his full Age, as during his Nonage.

There

(a) The Successor brought such a Writ, supposing the Tenure of a Tender by an Intrusion in the Time of his Predecessor, without any Agreement, &c. with the Abbot himself that was Plaintiff; and ruled good, *per Cur.* 11 H. 4. 82. But note; It seems better if the Writ supposes that

no Agreement was made with him or his Predecessor.

And note; One may have an Ejectment of Ward against the Heir himself. 32 E. 3. Brief 347. *Quare Bro. Jurisdiction* 23. 11 H. 7. 9. and 31 Aff. pl. 26. *contr.* 7 H. 6. 12. 21 E. 4. 43.



F There is another Writ *De valore maritagii* for the Lord or his Executors against the Heir, without speaking of any Intrusion made by the Heir into the Land. And the Writ is such:

*Rex Vic', &c. Si A. &c. fecerit, &c. tunc summ', &c. quare (a) cum maritagium ipsius L. &c. (usque ibi) obtulerit, præf. L. maritagium illud rennuet de eodem maritagio præfat' A. cum jam ad plenam ætatem pervenerit satisfacere recusavit, & adhuc recusat minus jussu, ad damnum, &c. Et contra formam statut'.*

G (b) And if the Heir be in the Lord's Custody, and doth marry himself within Age, without the Assent of the Lord, and when he cometh of full Age, he entreth upon the Lord, and puts him out of the Land, then the Lord shall have a Writ of Forfeiture of Marriage against him, for the double Value of the Marriage. And the Writ shall be such:

H (c) *Si A. fecerit, &c. tunc summ' C. fil' & hæred' D. quod sit coram Justiciar', &c. ostens. quare cum maritagium ipsius C. una cum custodia unius ac' terr' cum pertin' in N. ad ipsum A. pertin' ratione dimission' quam L. qui custodiam illam habuit ex dimissione F. cui G. eam dimisit, de quo prædict' D. terram suam tenuit per servitium militare, inde fecit præfat' A. & idem A. præf. C. dum infra ætatem & in custodia sua competens maritagium absque disparagatione juxta formam statuti de communi concilio regni nostri inde provisi sæpius obtulerit, idem C. maritagium illud renuens, se sine licentia & voluntate ipsius A. maritar' fecit, & se in terris prædictis (præf. A. pro maritagio prædicto non satisfacto) intrusit, & de maritagio prædicto eidem A. satisfacere contradicit, ad grave damnum ipsius A. contra formam statuti prædict' ut dicit, & habeas, &c. & suum', &c. Teste, &c.*

I And that Writ lieth where the Lord granteth the Wardship of the Heir and Land of his Tenant unto F. who granteth the same Heir and Land unto L. who granteth the same over unto the said A. the now Plaintiff, who tendreth Marriage unto C. and he refuseth the same, and marrieth himself during his Nonage, and at his full Age entreth into the Land, the Marriage not satisfied, &c.

K And otherwise for the Lord against the Tenant himself, thus:

*Si A. fecerit, &c. summ', &c. B. fil' & hæred' C. quod sit coram Justiciar', &c. ostens. quare cum maritagium prædict' B. ad ipsum A. pertineat, eo quod prædict' C. terram suam de eo tenuit per servitium militare, & idem*

U u 2

A.

(a) Note; This Writ does not lie till the Heir be out of Ward by full Age, or by making him Knight; so that if the Heir dies before such full Age, &c. the Value is lost. 6 Co. 75.

(b) To entitle one to have the double Value, see 16 E. 3. *Action sur le Stat.* 14. but he need not count, so 14 E. 3. *ibid.* 16, 17.

(c) See 16 E. 3. *Action sur le Stat.* 14. 18 E. 3. 18. and yet the Statute of Merton, cap. 6. does not give an Action but only a Retainer. 2 E. 3. *Action sur le Stat.* 23. that he has Election, and if he chooses this, he shall not retain the Land. 33 E. 3. *ibid.* 31. but see *contr. Temp. E. 1. ibid.* 36.

Note; He ought to shew in his Count, that the Feme was tendred, 28 E. 3. 92. and there, though the Lord after the Tender, &c. renders on the Land, and accepts the Relief of the Heir, yet he shall have the Forfeiture of the Marriage. Also, although the Heir be married by the Ravisher, the Lord has his Election to have either Ravishment of Ward or Forfeiture of the Marriage. 3 E. 2. *Action sur Stat.* 27.

Note for Form of the Writ, 14 E. 3. *ibid.* 17.

*A. competens maritagium absque disparagatione, &c. & prædict' B. dum infra ætatem fuit, frequent' obtulerit, idem B. maritagium illud admittere recusavit, & sine licentia & voluntate præf. A. se maritavit, &c. ad grave damnum, &c.*

[142.] And the Lord may have such a Writ of Forfeiture of Marriage against the Heir of the Mesne, if he marry during his Nonage, and enter into the Mesnalty, or take the Rent and Services of the Tenant Paravail, and the Writ shall be general, as if he were Tenant Paravail, &c. not making Mention of the Mesnalty.

If a Man be Tenant in Tail, the Reversion to the King, and the King doth license him to alien in Fee, and to take back an Estate unto himself and his Wife in Tail, the Remainder to his Right Heir, and he maketh such Feoffment, and taketh back an Estate unto himself and his Wife in Tail, the Remainder to his right Heirs, and dieth, his Heir within Age; the King, notwithstanding his License, shall have the Wardship during the Life of the Wife, for that the License doth not give him Power to alien the King's Reversion, &c. And when the Reversion cannot be discontinued, the Estate-Tail cannot be discontinued, but by his Death the Heir may enter into the Land, and so the King may in his Right (a).

V. Dyer 8. (b) If a Man have Lands for Life, the Remainder in Fee unto another, and he in the Remainder dieth, his Heir within Age, he shall &c. 12 & 132. b. C. 2. part not be in Ward during the Life of the Tenant for Life; because that 92. 11 H. 7. 19. during his Life, the Tenant for Life is Tenant to the Lord Paramount, 34 E. 1. pl. although the Land be holden by Knight's Service. And the Guardian 129. 36 E. 3. shall put out the Termor who holdeth for Years of the Lease of his Tenant. Gard 9.

1 E. 3. 3. (c) And the Statute of *Marlebridge* in a Manner proveth he may so do. And there are many old Books to prove the same by Judgments 36 H. 8. that are given; and it seemeth reasonable that it should be so, by the 100. Leases 18. ancient Title which the Lord hath, when he reserved such Services upon his Feoffment, to have the Wardship if he dieth, the Heir being within Age.

C. 3. Part 35. (d) And if the Tenant be disseised and dieth, his Heir being within 41 E. 3. 18. Age, the Lord shall seise the Ward, and enter into the Land upon the Br. War. 20. Disseisor in the Right of the Heir.

33 H. 6. 16. (e) But if the Tenant doth enfeof his Son during his Nonage, who Priso. doth Homage unto the Lord, and afterwards the Tenant dieth, the Heir within Age, the Lord shall not have the Wardship of him, because he hath accepted him for his Tenant in the Life of the Father. But it appeareth by *Magna Charta*, That the Lord shall take Homage of the Heir

(a) *Stamf. Prærog.* 56. 40 *Aff.* pl. 36. 21 *Aff.* pl. 15. 21 E. 3. pl. 58.

(b) So if Lands are leased to the Baron and Feme, and to the Heirs of the Baron who dies. 28 E. 3. 93.

(c) 5 H. 7. 3, 6. 14 H. 7. 22. 15 H. 7. 7. 33 H. 6. 42.

(d) *Vide infra K.*

(e) 36 E. 3. Gard. 11. 4 E. 3. 20. 33 H. 6. 16. *contr.* 31 E. 3. Gard. 55, 255. *Mag. Chart.* c. 3. 3 E. 2. *Avowry* 189. 4 E. 3. 20. But (F.) see 27 E. 3. 19. 8 E. 2. 96. 18 E. 3. 29. *quare* 97. 8 H. 3. *Ward* 139. *contr.*



Heir before he have the Wardship of him; but that is after the Death of the Ancestor, and not in the Life of the Ancestor, and so was the Law taken in old Books.

**F** If a Man purchase Lands by Feoffment which are holden severally of divers Lords by Knight's Service, and afterwards dieth, his Heir within Age, that Lord who first getteth the Ward shall have him, because there is no Priority; but if he purchase Lands which are holden by Knight's Service of one Lord, and afterwards purchase Lands by Knight's Service of another Lord, and dieth, his Heir within Age, that Lord shall have the Wardship of the Heir of whom the Land first purchased was holden, for he holdeth of him by the more (a) ancient Feoffment and Priority, than he holdeth of the other Lord.

And if a Man hold of the King by Posteriority, and holdeth Lands of another Lord by Priority, and afterwards dieth, his Heir within Age, the King shall have the Wardship of his Body by his Prerogative, not having Regard to the Priority or Posteriority.

And if a Man hold of the King by Posteriority, and of (b) another Lord by Priority, and afterwards the King granteth the Seigniorie unto the Queen for Life, and afterwards the Tenant dieth, his Heir within Age, the Queen shall have the Wardship of the Body, not having Regard unto the Posteriority, because that the Reversion of the Seigniorie doth remain in the King. 24 E. 3. 66. *Stamf. prerog.* 11.

But if the King hath granted the Remainder of the Seigniorie in Fee unto a Stranger, then it seemeth the Queen shall not have the Wardship of the Body, for the Seigniorie of Posteriority, &c. and Priority is changed by the Feoffment of the Tenant of the Land. And if he make a Feoffment in Fee of the Land which he holdeth by Priority, and take back an Estate again of the same, now he holdeth the same Land of that Lord by Posteriority, whereas he held it before of him by Priority. But if the Lord of whom the Tenant holdeth by Priority, grant

14 Aff. Br.  
Affise 192.  
Com. 133.  
36 E. 3.  
Gard. 11  
31 E. 1.  
Gard. 155.  
Br. Fealty.  
Good Bar in  
Forfeiture of  
Marriage in  
7 E. 2. Ad-  
on sur Stat.  
31:  
So of Land  
in Use, 21 H.  
8. B. Prero-  
gative 92.  
C. 5. Part 36.

*Quare*, If  
Plenarty be  
a good Plea  
against the  
Queen, where  
the Reversi-  
on is in the  
King.  
18 E. 3. 13.  
*Stanford*, Pre-  
rogative 13.  
If he make  
a Feoffment  
and this done  
to his Use;  
*Quare* if the  
Priority be  
gone. 2 E. 2.  
Fitz. Gard. 2.  
acc.

(a) Altho' he comes to the Seigniorie or Honour of which the Tenement is held by Escheat or Purchase, the King shall have the Ward, notwithstanding the Priority, because he is the Chief Lord, *de quo omnia Tenementa tenentur*. See *Bract.* 87. 5 E. 3. 4. adjudged, 24 E. 3. 31, 65. adjudged. See 12 H. 4. 25.

(b) See 21 E. 3. 41. but more fully *F. Prerog.* 16. A. holds of B. by Priority, and of the King as of the Honour of *Berkhamstead* by Posteriority; the King grants the Honour of B. to Prince E. whom he creates by the same Letters Patent Duke of *Cornwall*, *Habend' eidem Duci & ipsius & heredum suorum Reg' Angl' filiis primogenitis & dicti loci ducibus in Regno Anglia hereditario successoribus*, &c. ita quod ab eodem Ducatu nullatenus separentur, vel aliquibus aliis quæ dicti loci Ducibus per nos vel heredes nostros donentur, &c. with a Proviso, that if any happen to take by Force of

the said Grant, &c. *Quod dictus Ducatus ad nos vel heredes nostros Reges Anglia revertantur retinend' quousq'*, &c. *de hujusmodi filio apparen'*, &c. A. dies, his Son within Age, and it was demurred and doubted in Law, who should have the Ward; and by *Wilby*, the Prince shall have it; and for this see 24 E. 3. 31, 38. and 65. accordant. But there the Case was on a Grant for Life to the Queen, Remainder to the Prince and his Heirs Males Kings, &c. and so there was a Reversion in the King, and therefore it seems by that Book, that the King shall have his Prerogative; *contra* if the Remainder had been limited over in Fee-simple. See 12 E. 3. *Prerog.* 23. And it seems by 24 E. 3. 66. That if a Seigniorie be granted to A. for Life, Remainder to the King in Fee; the Tenant for Life shall have the Prerogative, because he holds in Right of him who has it.

3 E. 3 Gard. 19. 14 E. 3. Gard. 37. 35 E. 3. Gard. 12. cont. 11 E. 3. 115.

grant his Seigniorie unto another in Fee, and take back again an Estate in the Seigniorie to him in Fee, &c. yet the Tenant holdeth of him by Priority as he held before, because the Pleading of Priority is to say, that he holdeth of such a Man and his Ancestors, or of those whose Estate he hath in the (a) Seigniorie *per antiquius feoffamentum*, &c. than he holdeth the other Land, so that the Feoffment of the Land doth make the Priority. And if the Tenant do (b) forejudge the Mesne, of whom he holdeth by Priority, &c. Yet he shall hold by Priority of the Lord Paramount, as he held of the Mesne before, &c.

This not Law.

21 E. 3. Gard. 41.

The Mayor and Aldermen, and Chamberlains by the Custom of London shall have the Custody of any Orphan in the City, and if they commit the Custody of such Orphan to another, he shall have a Writ of Ravishment of Ward against him who taketh the Ward out of his Possession.

And if the Guardian marry the Heir after the Age of fourteen Years, and afterwards the Heir is taken by a Stranger, the Guardian shall not have a Writ of Ravishment, &c. because he hath had the Effect of his Marriage.

Tenant in Tail grants his Estate of a Manor unto which an Advowson is appendant, the Church void; Tenant in Tail dieth, the Grantee shall have the Advowson. So if the Church void during the Term, and the Term expire. 9 E. 3. *Quare impedit* 18.

If a Man have a Ward in the Right of his Wife, although the Wife dieth, yet the Husband shall have the Ward, because it is a Chattle vested in him. 10 H. 6. 11. 30 E. 3. 6.

(c) Where the Tenant maketh a Feoffment by Collusion, and the Lord accepteth the Services of the Feoffee, then he shall not have the Wardship of the Tenant's Heir, nor shall oversee the Collusion.

[143.] But the Custody que Use of a Seigniorie shall not have Guard, for the Feoffees before 27 H. 8. were Lords.

And if a Man at this Day maketh a Feoffment in Fee to his Use, and the Lord accept the Services of the Feoffee; yet if the Feoffor who hath the Use dieth, his Heir within Age, the Lord shall have the Wardship of his Heir by the Statute of 4 H. 7. cap. 17. (d)

And

(a) See *Rast. Entr.* 387. *Prædict' A.* the Father of the Infant & *antecessores sui* & *illi quor' Stat' ipsi habuerunt in eodem Manerio de S. tenuer' idem Maner' de S. de eodem G. & antecessoribus suis, quorum Statum illi habuerunt in Dominio ejusdem manerij de S. per servicium militare per antiquum Feoffament' &c.* See 3 E. 3. Gard. 19. adjudged, accordant 11 E. 3. Gard. 115. per *Shard.* 21 E. 3. 41.

(b) This seems not Law, for when the Tenant forejudges the Mesne, the Services due to the Mesnalty are gone, and he is become Tenant to the Lord *de novo*, so that he shall hold of the Lord by the Services

of the Mesne; so that if the Tenant ought to hold in Chivalry, and the Mesne in Socage; now the Tenant himself shall hold in Socage of the Lord, and so it is agreed, that by the Forejudger he is now Tenant to the Lord Paramount by Posteriority. 11 E. 3. Gard. 115. in a Writ of Ward by the Bishop of Exon, against R. B. for the Body of W. Son of B. de Bercelay. See 33 E. 3. Gard. 12. per *Shard.*

(c) 31 E. 1. Gard. 33, 155. 12 E. 3. Gard. 33. 36 E. 3. Gard. 11. 33 H. 6. 16. 29 E. 3. 48. 8 E. 3. 284.

(d) And thereon he shall have a general Writ and a Special Count. *Dyer* 8, 9.



- A** And if a Man lease Lands for Term of Life, the Remainder to the Husband and Wife in Tail, the Remainder in Fee to the Heirs of the Husband, and the Husband and Wife die, his Heir within Age being Tenant for Life, his Heir shall not be in Ward (a).
- B** If the King's Tenant giveth Lands in Tail without the King's License, and the King accepteth the ancient Tenant for his Tenant, and the Services, and afterwards the Donee in Tail dieth, his Heir within Age, the King shall have the Wardship of him, as seemeth by the Statute of 34 E. 3. cap. 15. And this Acceptance of the Services shall not conclude the King; for the King shall not be concluded, &c. if he have Matter to shew which may serve him. And yet in *Anno* 4 H. 6. it is adjudged contrary; and therefore *Quære* the Law in that Case.
- C** And the Lands of the Wife within Age shall be in Ward, altho' her Husband be of full Age. *Litt.* 22. b.  
And if a Woman be past the Age of fourteen Years at the Time of the Death of her Ancestor, she shall not be in Ward.
- D** A Committee of the King shall not have a Ward by Reason of the Ward, but the King shall have the same, because the King remaineth Guardian, &c. and the Heir shall sue Livery. 37 H. 8. 9. 39 E. 3. 8.
- E** (b) If a Bishop have Title to have a Ward, and doth not seise him in his Life-time, and dieth, the Successor shall have that Ward, and shall seise him, &c. Otherwise it seemeth if the Bishop had seised him. See *Dyer* 277. *contr'*.
- F** If the Heir Female be married by the Lord before her Age of fourteen Years, and afterwards the Husband dieth, the Heir Female shall not be married again by the Law, &c. And by that same Reason he shall not have a Writ of Ravishment of Ward, if another Man do ravish her afterwards. *Bro. Quar. Imp.* 47. *Litt.* 23.
- G** (c) If the Grandfather have a Son, and the Son taketh a Wife, and have Issue, and dieth, the Mother of the Issue shall have the Wardship of the Child which is her own Child, and not the Grandfather, altho' the Issue may have the Land which ought to descend to him by the Grandfather, and although that the Mother shall not have the Land. *Hill.* 31 E. 3. *Bar.* 257. *Brief* 327. 30 E. 3. 17.

27 H. 8. 26.  
Fitz-herbert  
*contra.*  
Vid. 34 & 35  
H. 8. Dy. 54.  
4 H. 6. 19.

N. B. 96. b.  
26 H.

35 H. 6.  
Gard. 14, 90.

2 H. 4. 19 ac.  
40 E. 3. 14.  
*contra.* 10 El.  
*Dyer* 277.  
the Executors  
of the Predecessor  
shall have  
the Ward.

*Litt.* 25.

C. 6. Part 22.  
6.

If

(a) But after his Death he shall be in Ward, adjudged 24 E. 3. 33. for the Heir in such Case is in by Descent, and therefore if he becomes Tenant in Demesne or by Fiction of Law, as by Recceit or Aid Prayer, he shall have his Age, see 24 E. 3. 69. adjudged, and 25 E. 3. 42. Lands held in *Capite* were given to A. for Life, Remainder to B. his Son in Tail, Remainder to the right Heirs of A. who died, B. shall pay Relief to the King. 26 E. 3. 71. *Dyer* 308. 40 E. 3. 9. The Grandfather was Lessee for Life, Remainder to the Father in Tail, Remainder to the right Heirs of the Grandfather of Lands in *Ca-*

*pite.* The Father dies, and the Grandfather and Son levy a Fine to J. S. and take back an Estate to the Ayl for Life, Remainder to the Son and his Wife in Tail, Remainder to the Right Heirs of the Grandfather; the Grandfather surrenders, &c. the Son shall pay Relief. *Dyer* 235.

(b) 40 E. 3. 14. 2 H. 4. 16. 11 H. 4. 80.  
7 H. 4. 35.

(c) See *Ratcliff's Case.* 7 Co. 83. The Mother shall have the Custody of her Son, or Daughter and Heir apparent against a Deforceor, but not against a Guardian in Chivalry, as in the Case of a Father. 9 E. 4. 53.

11 H. 7. 12.  
contr.  
7 H. 4. 12. ac.  
Br. Gard 98.  
43 E. 3. 18.  
contr.

If an Infant recover Land by a Writ of *Dum non fuit compos mentis*, H he shall not be in Ward; and so it seemeth if (a) he do recover by a Formedon or other Action Auncestral, where he could not enter, because his Ancestor did not die Tenant to the Lord, &c. nor in his Homage. *Stamf. prerog.* 8.

And a Man may seise his Ward, although he be Apprentice or in I Service of another. 4 *El.* 259. 14 *H.* 8. 14, 32, 8 *E.* 4. 7. 27. *Aff.* 21.

But if the Tenant maketh a Feoffment by Collusion, the Lord ought K to recover the Land by a Writ of Right of Ward, before he shall have a Writ for the Ravishment of the Ward, &c. (b) 12 *H.* 4. 13.

If a Man be Tenant by the Curtesy of a Seignior, the Heir shall not L be in Ward during the Life of the Tenant by the Curtesy, &c. *Bro. Gar.* 110.

But if a Man have Issue a Son, and afterwards he taketh a Wife who hath Lands holden by Knight's Service, and hath Issue by her, and afterwards the Wife dieth, if the Husband be not Tenant by the Curtesy of the Land, then the Husband's younger Son shall be in Ward during the Life of his Father, &c. *N. B.* 99. 30 *E.* 1. *Gard.* 156.

30 *E.* 1. *Gar.*  
156. ac. but  
shall not  
have Forfeiture upon  
Tender and  
Refusal.  
7 *H.* 6. 12.  
In Case of  
the King.  
40 *Aff.* 7.  
Br. Vill. 31.

If an Infant be married in the Life of his Father within the Age of M Consent, and afterwards the Father dieth, the Infant being within the Age of Consent; the Lord shall have a Writ of Ravishment of Ward for the Infant, because he may perhaps disagree unto the Marriage.

(c) And the Lord of the Villain shall have the Wardship of the N Land, and the Body of the Heir of a Villain, if he seise him before the Lord, &c. otherwise not of the Land.

If Lands descend unto the Wife, and afterwards the Wife hath I- O sue by her Husband, and dieth before the Husband entreteth, so that he shall not be Tenant by the Curtesy; the Issue shall (d) be in Ward if he be within Age, and if he be not Heir apparent to the Husband; and so if the Issue by the Wife were a Woman, and within Age, where the Husband hath a Son living, that Issue within Age shall be in Ward, during the Life of the Husband which is its Father.

31 *E.* 1. *Gard.*  
154. 2 *E.* 2.  
*Gard.* 3.

And *Pasch.* 31 *E.* 3. The Opinion was, that if the Husband have not Land which shall from him descend to his Issue, that then his Issue shall be in Ward for the Lands of his Wife, if he were within Age, &c. in the Life of the Husband: But it seemeth that the Law is not now taken to be so.

26 *E.* 3. 65.  
33 *E.* 3. *Gard.*  
161. *N. B.* 92.

Guardian in Socage did grant the Wardship over to a Stranger, and p the Grant awarded good. *Hill.* 26 *E.* 3. & *Hill.* 31 *E.* 3.

11 *H.* 7. 12.  
12 *H.* 7. 10.  
6 *H.* 4. 4.

If an Infant enter for a Condition broken, upon a Feoffment made by Q his Ancestor, he shall be in Ward for that Land, if it be holden by Knight's

(a) Tenant in Tail, with a Remainder in Fee, aliens in Fee, and dies without Issue, the Heir of him in Remainder recovers in a Formedon, he shall not be in Ward; by *Dyer, Tr. n.* 3 *Eliz.*

(b) Or Right of Ward for the Body. 12 *H.* 4. 13. It seems he may seise the Body immediately. *Kelw.* 120.

Note; A Tenant for Life of a Seignior shall have Wardship but not Esuage. 6 *E.* 2. *Gard* 122.

(c) 40 *Aff.* pl. 17. *Esheat* 16. *Gard.* 131. *Litt.* 25.

(d) Be it Male or Female. 31 *E.* 3. *Gard.* 154. 8 *E.* 2. *Trespas* 235. 33 *H.* 6. 55.



**Knight's Service.** *Dyer* 304. *b.* 32 *E.* 3. *Gard.* 32. 7 *El.* 304. *b.* *Ant.* 90. *H.*

**R** (a) And a Man or a Woman shall have a Writ, *Quare filium & hæredem suum rapuit*: Or, *Quare filium & hæredem suum rapuit*, Or, *Consanguineum & hæredem suum rapuit*, &c. and that by the Common Law. Vid. 2 & 3 Eliz. Dyer. 190.

**S** And the Proceſs in a Writ of Ward appeareth by the Statute of *Marlebridge, cap. 7. viz.* Summons, Attachment and Distress (b).

And in a Writ of Right of Ward, if he cometh not at the Distress, then the Proclamation shall be awarded, that he shall have Day by which two or three County-Courts are holden in the mean Time, before the Return thereof; and if the Writ be returned, served, and he do not appear, he shall lose the Wardship, and the Plaintiff shall by Judgment recover the same (c).

## Writ of Escheat.

**T**HE Writ of Escheat lieth where the Tenant who hath an Estate in Fee-simple, of any Lands or Tenements, and holdeth them of another, and the Tenant dieth seised without Heir General or Special, the Lord shall have the Writ of Escheat against him who is Tenant of the Lands or Tenements, after the Death of his Tenant, and by this Writ he shall recover the Land, because he shall have the same in Lieu of his Services. 36 E. 3. 17.  
3 E. 3. Bar.  
257.  
Foundership shall not escheat nor be forfeited, because it is tied to the

Blood. Also Rent-charge shall not escheat by Death, *contr.* by Attainder, 24 *E.* 3. 12. *Br. Escheat* 9 *H.* 7. 37. 7 *E.* 4. 11, 120. If Abbey or Parish-Church be dissolved, the Lands which they held shall Escheat. 21 *H.* 7. 89. If a Man holdeth two Acres by several Services of one Lord, he ought to have two Writs of Escheat.

**A** But if Tenant in Tail die without Heir, he in the Reversion shall not [144.] have a Writ of Escheat, but a Formedon in the Reverter.

But if a Man be Tenant in Tail of Land, the Remainder to his right Heirs, and dieth without Heir, then the Lord of whom the Lands were Tenant in Tail of a Seigniori grants the same which  
X x holden

escheats, Tenant in Tail dieth without Issue, he in the Reversion shall have Escheat of the Land, because he is come in Lieu of the Seig. See 40 *E.* 3. 4. 33 *E.* 3. *Escheat* 9. but by his Opinion he shall not have Escheat, because the Reversion was out of him at the Death of the Tenant.

(a) 21 *H.* 6. 14. 32 *E.* 3. *Gard.* 32. *Ant.* 90. *H.*

(b) 13 *E.* 4. 12. *Bro. Faux Lat.* 81. See *Dyer* 304. And by some, if the Sheriff returns *Nihil*, &c. yet a *Distingas* with Proclamation shall issue. 11 *H.* 6. 3. *contra* 21 *H.* 6. 56.

(c) See 12 *H.* 4. 16. 29 *Aff.* 35. See 24 *E.* 3. 44. Judgment given and an Inquiry of Damages, &c. afterward, and therefore Error brought. 42 *E.* 3. 1. an Inquiry of Damages, and whether the Heir were married, &c. and Judgment given afterwards. See 24 *E.* 3. 49. Judgment for the Ward

instantly; and note the Cause: A Resummons in a Writ of Ward was sued by the Heir of the Plaintiff, against the Executors of the Defendant, who plead that the Heir was of full Age in the Testator's Lifetime, and that before this Writ purchased they had fully administered; and the Plaintiff, *per* Chasement replied, that he had not Assets, &c. and he had Judgment instantly for the Ward, and the Inquest was taken on the Issue for his Damages; and afterwards the Defendant could not be excoined, because the Original was determined. 24 *E.* 3. 49, 53.

holden in Tail, shall have a Writ of (a) Escheat, because the Tenant in Tail was Tenant unto the Lord for the Fee-simple that he had in the Land, &c.

3 H. 2. Entr. But if a Man be Tenant for Life, the Remainder in Fee unto a B  
38. 7 H. 4. 17. Stranger and his Heirs, and afterwards the Stranger dieth without Heir,  
contra if the and afterward the Tenant for Life dieth; the Lord shall not have a  
Disseisor die Writ of Escheat, because the Tenant for Life was Tenant to the Lord, and  
or alien, for not he in the Remainder, &c. But there the Lord shall have a Writ of Intrusion  
these are Tenants by if a Stranger enter on the Land after the Death of Tenant for Life.

Title. (b) And if the Tenant be disseised, and afterwards dieth without Heir, C  
15 E. 4. 14. &c. it seemeth the Lord shall have a Writ of Escheat, because his Tenant  
32 H. 6. 27. died in the Homage. And in that Case he shall have a Writ of  
37 H. 6. 1. Right of Ward, if the Tenant die, his Heir being within Age, and by  
the like Reason he shall have a Writ of Escheat. 2 H. 4. 8. *con.* 15 E. 4.  
14. *cont.*

If the Tenant dieth without Heirs, and afterwards the Lord dieth; D  
the Heir of the Lord shall have a Writ of Escheat for to recover the  
Land, &c. for that Escheat made, and shall give a Right unto the Lord  
to have the Land.

46 E. 3. 4. And this Writ shall descend from the Lord unto his Heir, &c. and the E  
The Son Forms of the Writs of Escheats are divers: One where the Tenant is a  
brought Escheat supposing that the Bastard, and dieth without Heir, and then the Writ is such:  
Tenant held of his Father, whose Heir he is, and Exception taken, because it ought to be *quod de eo tenet*.

*Rex Vic, &c. Præc' A. &c. quod redd' B. 10 acr' terr' cum pertin' in N. quas C. de eo tenuit, & que ad ipsum B. reverti debent, tanquam escheata sua, eo quod prædict' E. bastardus fuit, & obiit sine hæred' ut dicit, &c.*

And if he be not a Bastard, (c) but dieth without Heir, then the F  
Writ is, *Et quæ ad ipsum B. reverti debeant tanquam escheata sua, eo quod prædict' C. obiit sine hæred', vel sic: eo quod prædict' C. feloniam fecit, pro qua suspensus fuit; vel pro qua (c) utlagatus fuit; vel pro qua regnum abjuravit; & nisi, &c.* And the Form of the Writs for the Heir appear in the Register.

And

(a) See *contra per Scot.* 12 E. 3. See 15 E. 4. 13. 3 H. 6. *Escheat*.

(b) See 17 E. 3. 64. *per Thorp.* So if Tenant makes a Lease for Life by *Hankf.* 2 H. 4. 8. See 7 H. 4. 17. 32 H. 6. 27. If Tenant makes a Lease for Life, and then dies, having Issue B. who dies without Heir, and afterwards Tenant for Life dies; if a Tenant abates, the Lord may have Intrusion; but by *Hankf.* he shall not have Escheat, *contra Fitz.* For the Words of the Writ are true, that he is dead without Heir, and that he holds of him; but agreed by all, that if he brings Escheat, he cannot have

this Writ, supposing that the Lessor dies without Heir, though he was the last that was seised in Demesne; for it is a good Plea to say that he had Issue B. who survived him; and it is not material whether B. was seised or not. See 11 H. 4. 11. 7 H. 5. 9.

(c) Or committed Felony. 19 E. 3. *Brief* 251.

(d) And the Outlawry for Felony shall not be reversed without suing a *Scire facias* against the Lord mediate and immediate. 9 H. 4. 3. accordant, and in this Writ, Error in the Outlawry cannot be shewn. *Dyer* 67.



G And the King shall have a Writ of Escheat for Lands in *London*, if the Tenant died seised of Lands there without Heir, because the Lands in *London* are holden of the King; and this Writ he may sue in the King's Bench or in the Common Pleas.

H And if a Man be beheaded for Felony, or die after Judgment, before that he be executed by the Officer; yet the (c) Writ shall say, *Pro qua suspensus fuit, &c.* and it is not material whether that he be hanged or not.

Or if after Judgment he be delivered to the Bishop.  
34 E. 3. Escheat 10.

contrary if he stand mute. 4 E. 4. 18. 22 H. 6. 38. *Newton*, If a Man go beyond Sea without License, and taketh Wife there, and hath Issue and dieth, the Land shall escheat.

And the Course in the Register was, That if a Man were attainted of Felony, that the King did send a Writ to the Sheriff to enquire what Lands and Tenements he had, and which he held of the King, and which of other Lords, and by what Service, and what they were worth by the Year *ultra reprimas*, and that he certify the same. But the same is altered by the Statute of 28 *Eliz.* 3. *cap.* 9. which is, that a Commission be made out unto the Sheriff to take the Inquest: And also there was another Writ appointed by the Register, directed unto the Sheriff to enquire whether such House or Land which *W.* had, who was attainted of Felony, were seised into the King's Hand for a Year and one Day or not, and of whom they were holden, and who had the Year, Day and Waste, and ought to answer the King for the same, and that he send the same before the King, &c. and now in Place of these Writs, there ought to be a Commission granted to enquire thereof, directed to certain Persons by the Statute aforesaid.

48 E. 3. 34. Where the Tenant is Utlage of Felony, the Lord hath Election to have a Writ of Escheat; supposing that the Tenant was Utlage, or that he died without Heir.

K And if a Man be attainted of Felony, and another enters into the Land, and taketh the Profits, and if it be found by Commission that such a Man, who was attainted of Felony, had such Lands and Tenements, and that the Lands and Tenements have been in the King's Hands for one Year and a Day; and that *B.* hath taken the Profits for that Year and Day, and also hath had the Waste thereof; and that the Lands are holden of *F.* Then *F.* shall have a Writ unto the Sheriff, for to deliver him Seizure of the Lands, &c. *Salvo jure cujuslibet.*

And he who hath taken the Profits for the said Year and Day, shall answer the King for the same: And thereby it appeareth, that the King shall not have but the next Year and Day, which cometh after the Attainder, and that he who took the Profits for that Year, shall answer the King for the same.

49 E. 3. 11.

L And if Lands be holden of an Abbot, and the Tenant die without Heir, &c. the Successor shall have a Writ of Escheat, and the Writ shall suppose, *Ad ipsum nunc Abbatem reverti debet tanquam Escheata sua, eo quod præd', &c. obiit sine hæred', &c. ut dic'. Et nisi, &c.*

X x 2

(a) And

(a) See *Rot. Parl.* 8 E. 2. *M.* 5. *ubi Decollatur per R. & Concil'.* If the Appellée be killed in Battle, the Judgment is to be

given against him; otherwise the Lord cannot have the Escheat. 8 E. 1. *Judgment* 225.

(a) And the Tenant for Life of the Seigniorship shall have a Writ of M Escheat, or Tenant in Dowry, or by the Curtesy, and also the Lord shall have a Writ of Escheat of the Mesnalty, which is but a Rent-Service, and shall demand the Rent by the Writ.

7 H. 6. Escheat 18.

21 H. 7. 30.

But by the Count, he shall suppose the Land was holden.

31 H. 4. 82.

And the King shall have a Writ of Escheat of Tenements within Cities and Boroughs, which are holden of him in Fee-farm. 3 H. 6. 32.

49 E. 3. 5. a.

(b) And if a Man have Title to have a Writ of Escheat, if he do not accept Homage of the Tenant, he shall not afterwards have the Writ against him, because he hath accepted him his Tenant; and so if he accept Fealty of him. But if he do accept the Rent of the Tenant, that shall not bar him of his Writ of Escheat; and the Process are *Summons*, *Grand Cape* and *Petit Cape*, as in any other *Præcipe quod reddat*. But it is otherwise if he accept (c) Rent from the Heir of the Disseisor. *Co. Lit.*

## Writ of Covenant.

[145.]

**W**RITS of Covenant are of divers Natures; for some are merely personal, and some Covenants are real; to have a real Thing, as Lands and Tenements; as a Covenant to levy a Fine of Land is a real Covenant. But a Writ of Covenant which is more personal is, where a Man by Deed doth covenant with another to build him a House, &c. or to serve him, or to enfeoff him, &c. and he doth not the same according to the Covenant: Then he with whom the Covenant was so made, shall have Writ of Covenant against him. And there is a Note in the Register, which is this: *A Writ of Covenant ought not to be made according to Law Merch. without a Deed, because no Plea of Covenant can be without Deed, and every Man ought to be judged according to his Deed, and not by another Law; and the Form of the Writ is such: Rex Vic, &c.*

(a) And if the Tenant for Life dies before Entry, he in Reversion shall have a Writ of Escheat. *Kelw.* 114. See 7 R. 2. Escheat 4. 33 E. 3. Dower 137. cont. 8 E. 2. Escheat 12.

(b) 13 E. 1. *Avowry* 235. The elder Son receives Homage of the middlemost, seized in Fee, who dies without Issue, the younger Brother shall have the Land, and the Issue of the elder Brother, if not born at the Time, shall have it, &c. See 11 E. 3. Dower 63. where Acceptance of the Homage by the Wife, after the Death of her Husband, shall oust her of Dower of the Tenements. See 5 H. 7. *Dreit* 66. Acceptance of Homage from the Tenant, shall bar in a Writ of Right. See 17 Aff. 3. the Disseisor accepts Homage from the

Disseisor, it shall bar him for his Life, but not his Heir. 26 E. 3. 72. Tenant dies without Heir, the Lord enters and makes a Feoffment, and takes back an Estate for Life; a Bastard of the Tenant enters and enfeoffs G. of whom the Lord accepts the Homage; and it is demurred in Law, whether this has not excused (estopped) him to have the Land; the Doubt is, because the Seigniorship was absolutely gone by the Entry and Acceptance of the Fealty, in Bar of the Writ of Entry *sur Disseisin*. 13 E. 3. Bar. 353. *Vide ant. E.*

(c) And note; Acceptance of the Rent shall not make a Change in the Avowry, because it may be received as by the Hands of his Bailiff, &c. but it is otherwise of Homage or Fealty. See 4 H. 6. 21. *Co. Lit.*



*Et c. Præc' A. quod, Et c. teneat B. convent', Et c. de damn' & perdit' per infidelitatem & defectum W. fil' R. appren'icii præd' B. infra termin' sex. annorum illat' eidem B. restituend'. Et nisi, Et c.*

**C** And if a Man make a Covenant by Deed to another and his Heirs, to enfeof him and his Heirs of the Manor of *D.* *Et c.* Now if he will not do it, and he to whom the Covenant is made dieth, his Heir shall have a Writ of Covenant upon that Deed; and also his Assigns shall have a Writ of Covenant where the Covenant is made to him and his Assigns.

18 Eliz. Dy.  
217. Sir Anthony Cook's Case.

**D** And so Executors shall have a Writ of Covenant, of a Covenant made unto their Testators for a personal Thing, and these Writs appear in the Register.

And it appeareth by the Register he may sue a Plaint of Covenant in the County or in the Hundred-Court, *Et c.*

And that he shall have a *Recordare* to the Sheriff, for to remove the same out of the County into the Common Pleas, as it shall be done in a Replevin sued there.

And if the Plaint of Covenant be sued in the Hundred, or in other Court of other Lord, he shall have an *Accedas ad Curiam* directed unto the Sheriff to remove the Plaint into the Common Pleas (a).

**F** And the Writ of Covenant for Executors is such: *Præc' I. quod, Et c. A. B. & C. executoribus testament' N. conventionem fact' inter ipsum N. & W. de E. de ipso W. cum prædict' N. more appren'icii per septem an' moratur' & eidem N. post termin' illum complet' per tantum tempus quantum idem W. infra dict' termin' se a servitio ejusdem N. elongaverit servitur' ad quam quidem conventionem adimplend' & manutenend' idem W. script' suo se oblig'. Et nisi, Et c. Et præd' execut', Et c.*

**G** And if a Man make such Covenant by Word; or to build him a House, *Et c.* and he doth it ill; then the Party shall have an Action upon the Case for the ill doing of it (b).

If a Man covenant by Word to do such a Thing for a certain Sum of Money, and receive one Parcel of the Money, and Day is appointed for the Payment of the rest. Now if he do not according to his Covenant, he shall have an Action on the Case against him for not doing of it, because it is a Bargain betwixt them (c).

**H** And a Writ of Covenant lieth against Executors for a Covenant broken of the Testator, and the Writ shall be, *Præcip' I. & R. executor' testament' E. quod' Et c. teneant W. & A. uxori ejus conventionem factam inter ipsum A. & præf. E. de eo quod idem E. hæred' vel executores sui red-dant C. fil' & hæred' I. cum idem C. ad plenam ætatem pervenerit rationabi'*

Vi. 48 E. 3. 2.  
10 H. 7. 18.  
32 H. 6. 31.

(a) A Man covenants, that neither he nor his Heir shall erect any Mill in such a Place, and afterwards he erects a Mill, and an Action of Covenant is thereupon brought by the Heir, and well. 4 H. 3. 57. and so it is if the Lessor ousts the Lessee and dies, or Tenant in Tail leases for Years and dies, and the Issue ousts the Termor, he shall have Covenant against the Executors. 47 E. 3. 22. 43 E. 3. 2. but 38 E. 3.

24. is, that he shall recover the Whole in Damages against the Heir, if he has Assets by Descent *per Knivet and Skipw.*

*W. W.* See 21 H. 6. 55. 2 H. 4. 3. 14 H. 6. 18. 20 H. 6. 34.

(b) 21 H. 7. 4. 3 H. 6. 36. 20 H. 6. 34. 14 H. 6. 18. 21 H. 6. 55. *contr.* 42 H. 4. 3. *contr.* 11 H. 4. 33. *contr.*

(c) 32 H. 6. 32.

*nabil' compot' suum de omnib' terr' & tenement' que pred' I. tenuit in villa de N. in Com' N. pervenient', quorum custod' idem E. habuit ex demission' quam pref. A. cui custod' terrar' & hered' predit' pertinuit, eo quod pred' I. terram suam tenuit in socagio, & eadem A. propinquior fuit hered' ipsius I. inde fecit eidem E. &c. Et nisi, &c.*

(a) And if a Man have Lands for a Term of Years, and covenant-  
 12 E. 3. Co- eth to leave them in as good a Plight as he found them, although that  
 venant 2. he pulleth down the Houses, the Lessor shall not have an Action of  
 40 E. 3. 5. Covenant before the End of the Term: For the Covenant hath Rela-  
 tion thereunto, &c. But if he do Waste in Wood, Covenant lieth; for  
 he cannot repair it. *E. 1. Covenant 29.*

If a Man make a Lease by Deed-poll, if the Lessor put out the Lessee, K  
 he shall have a Writ of Covenant upon the Deed-poll (b). But if a  
 Stranger who hath no Right, put out the Lessee, he shall not have a  
 26 H. 8. 3. ac. Writ of Covenant against the Lessor, because he hath no Remedy by  
 Action against the Stranger. But if the Stranger enter by eigne Title  
 upon the Lessee, then he shall have an Action of Covenant against the  
 Lessor, because he hath no other Remedy.

(c) And in a Writ of Covenant brought by the Lessee against the M  
 Lessor, if the Term be not expired, he shall recover the Term again,  
 if he hath put him out. But if a Stranger put him out by eigne Title,  
 then he shall recover all in Damages against the Lessor. And the second  
 Lessee shall have a Writ of Covenant against the Lessor, if the Lease  
 be made to him and his Assignees with Warranty.

And if a Man lease Lands for Life by Deed, and afterwards (c) put-  
 teth him out, the Lessee shall not have a Writ of Covenant against  
 him, but an Affise. But if he grant by the Deed, that if a Stranger  
 enter by eigne Title, that then he shall have a Writ of Covenant there-  
 upon:

(a) *Perk. Covenant 29.* As to cutting  
 Wood *contr. See 5 Co. 21. a.*

(b) 17 E. 3. *Covenant 2.* accordant. But  
 if he abate Trees, &c. *contr. Temp. E. 1.*  
*Covenant 29.*

(c) See 20 E. 3. *Judgment 177.* accord-  
 ant; for that the Demise is good from his  
 Entry; but if Tenant in Tail makes a  
 Lease for Years by Deed, and dies seised  
 of Assets in Fee-simple; yet the Issue in  
 Tail may enter; and therefore the Lessee  
 shall have a Writ of Covenant against him  
 to recover Damages, but not to recover  
 the Term, for his Entry was lawful. 38 E.  
 3. 24. *Note*; The Writ of Covenant for  
 the Lessee who is ousted by a Stranger,  
 by Title is, *Quod teneat Convent', &c. De*  
*damnis & de perditis.* See there the Case  
 of a Lessee for Life, the Remainder in  
 Fee; the Feoffee for Life makes a Lease  
 for Years (by *dedi & demisi*) rendring Rent  
 by Indenture, and dies within the Term;

he in Remainder enters; the Lessee brings  
 Covenant against the Executors, and held  
 that it did not lie. (1.) Because it is not  
 shewn, that he was possessed at the Time  
 of the Entry of him in Remainder. (2.)  
 For that without an express Covenant, the  
 Executor shall not be charged in this Case,  
 for the Covenant in Law expired with the  
 Term. But if A. seised in Fee, makes a  
 Lease for Years and dies, and the Heir  
 ousts the Lessee, he shall have Covenant  
 against the Heir, for this Covenant in Law.  
 See the Statute *de Bigamis*, and *Dyer 257.*  
 11 H. 6. 3. *Covenant 23, 27.* 6 E. 2. 17.  
 38 E. 3. 34. 16 H. 7. 10. N. B. 102. *Cove-*  
*nant 28, 30, &c.*

(d) 32 H. 6. 32. *contr.* if Lessee for Years;  
 and note; Action of Covenant lies against  
 the Assignee of a Lessee for Years for Re-  
 parations, &c. for that it goes with the  
 Land; also it lies against the first Lessee  
 after Assignment. 25 H. 8. *Covenant 32.*



upon: Now upon the special Matter he shall have a Writ of Covenant, otherwise not, *Quod Vi. Trin.* 26 H. 6. *Covenant. pl.* 10.

- A And in *London*, a Man shall have a Writ of Covenant without a Deed for the Covenant broken. 27 H. 6. 10. [146.]  
 B And a Man shall have a Writ of Covenant against the Sureties who became Sureties, or gave Security that a Man should perform such Covenant, *Ec.* 39 E. 3. 9. 27 H. 6. Covenant 11.  
 C (a) And the Assignee of the Lessee shall maintain a Writ of Covenant against the Lessor, although there be not any Assignee mentioned in the Deed of Covenant. 17 H. 6. 10. 40 E. 3. 5. 42 E. 3. 3. *Fin. bden.* If the Covenant go with Land, the Assignee shall have Covenant without being named. As two Coparceners, one covenanteth to discharge the other Party, the Alinee shall have Covenant.

- D Also Administrators shall have a Writ of Covenant as well as Executors.  
 E And the Writ of Covenant ought to be brought where the Covenant was made. But if he bring it in another County, the Party shall not plead the same to abate the Writ, unless the Deed bear Date in another County, and so the Titles of Covenant in the Abridgments were at large for that Matter. 26 H. 6. Covenant 9. although it bear Date in other County, yet the Writ lieth where the Land is.

(b) Covenant to levy a Fine.

**T**HERE is another Manner of Covenant, which is more in the Realty. And that Writ properly lieth where a Man by Deed granteth to another to levy a Fine to him and his Heirs of certain Lands and Tenements, he to whom the Grant is made shall have a Writ of Covenant against him to levy a Fine of that Land; and the Form of the Writ is such:

*Rex Vic', Ec. Præcip' A. Ec. quod, Ec. teneat B. convention' suam inter eos fact'* (c) *de manerio de N. cum pertin': Vel sic; de uno mesuagio Ec una acr' terr' cum pertin' in N. Ec. nisi, Ec.* F. Brief 867.

And the Form of the Particulars in that Writ shall be used as the Form is in a *Præcipe quod reddat* of Land, to put the Particulars in the said Writ. 46 E. 3. 4. 47 E. 3. 3.

(a) And

(a) *DoHox and Student* 16, 17. *Bro. Covenant* 32. *F. Obligation* 16. *Perk.* 13. 40 E. 2. 5. *supra M.*

(b) And yet by *Paston*, it is only a personal Action; and a Release of all Actions personal, is a good Plea therein; also the Sheriff may return *Nihil* on the Defendant in this Writ, and need not summon him in *Terra petita*; *sed alii contr.* 10 F. 6. 12, 13.

*Note*; The Difference between this and other Writs of Covenant; for this Writ is special, and the others general. 10 H. 6. 13.

(c) And note; On such Fine levied of the Manor of *N.* brought in the County of *L.* the Services of the Tenants in another County, held of the same Manor, shall pass; and a *Per que servitia* shall be brought in the County of *L.* Adjudged 21 E. 3. 18.

1511.8 B. 27.  
fines 116.

(a) And if he who ought to levy the Fine, and make the Conufance, cannot come for Sicknefs or other reasonable Cause into Court, then he may sue a Writ of *Dedimus potestatem*, directed unto some Justice, that he go to him to take the Conufance, and to certify the same unto Justices of the Common Pleas, and the Writ of Covenant ought to be sued before the *Dedimus potestatem* be returned in the Common Pleas; and the *Dedimus potestatem* ought to recite that the Writ of Covenant is depending in the Common Pleas before the Justices; and the Writ shall be such (b):

*Rex dilecto & fideli suo, W. Rickhill salutem. Cum breve nostrum de convention' pendeat coram vobis & sociis vestr' Justic' nostris de banco inter A. & B. & C. uxor' ejus de una caruca terre cum pertin' in N. ad finem inde inter eos coram vobis & sociis vestris predict' de banco predict' secundum legem & consuetudinem regni nostri levand', ac pref. A. B. & C. adeo impotentes sui existant, quod absque maximo suorum corporum periculo usque ad Westm' ad diem in brevi predict' contentum ad recognitiones quæ in hac parte requiruntur faciend' laborare non sufficiunt, ut accepimus: Nos statui eorund' A. B. & C. compatiens in hac parte, dedimus vobis potestatem recipiend' cognitiones quas predict' A. B. & C. coram vobis facere voluerint in premiss'. & ideo vobis mandam' quod ad pref. A. B. & C. personaliter accedent' cognition' suas predict' recipiatis. Et cum eas receperitis prefat' socios vestros inde distincte & aperte reddatis certiores ut tunc finis ille inter partes predict' de tenementis predict' coram vobis & sociis vestris predict' in eodem banco levare possit, secundum legem & consuetudinem predict' & habeas ibi tunc hoc breve. Teste, &c.*

And if the *Dedimus potestatem* be made unto any the Justices of the King's Bench, then the Form of the Writ is such:

*Rex dilect', &c. W. capital' Justic' nostro. Vel sic; Justic' nostro, &c. Cum custos domus vicarie Ecclesie beati Petri Ebor' tulerit breve nostr' de convent' versus H. militem de advocacione Ecclesie de F. ad finem inde inter eos coram Justic' nostris de banco secund' legem & consuetud' regni nostri levand', ac idem custos & H. adeo impotentes, &c. (usque ibi) & cum eas receperitis prefat' Justic' nostros inde sub sigillo vestro distincte & aperte reddatis certiores, ut tunc finis ille, &c. (usque ibi) secundum legem & consuetudinem supradict' mittend' eisdem Justic' hoc breve. Teste, &c.*

And if a Man have divers Writs of Covenant depending against several Persons in several Counties, &c. he may have one Writ of *Dedimus potestatem* directed to one Justice to take their Conufance severally, and to certify them, &c. and the Form of the Writ is such:

*Rex, &c. Cum breve nostrum de convention' pendeat coram vobis & sociis vestris Justic' nostris in banco inter E. & J. de medietate manerii de N. cum pertin' & aliud breve nostrum de convention' pendeat coram vobis & sociis vestris predict' inter ipsum E. & prefat' I. de una mesuagio, &c. (& sic de aliis, &c.) ac fines inter eos, &c. (ubi supra). And*

(a) See the Statute of Carlisle, 15 F. 2. for, before that Statute, one might have levied a Fine by Attorney. *Libr. Parl.* 18 E. 1. 11. See *Stat. Mag. Clart.* fol. 93.

(b) See a good Distinction between anti-

cient Fines and those levied at this Day. A Fine levied without an Original, or of Things not comprised in the Original, or after a Nonsuit recorded, good in ancient times. 16 E. 3. *Abbe* 13.



And if a Man ought for to levy a Fine, and he is going in the King's Service, then he shall have a *Dedimus potestatem* directed unto the Justices, to take his Conufance. And so of a Woman who is with Child; and the Writ shall mention the same, thus:

Rex, &c. Cum breve, &c. (usque ibi) ad finem, &c. ac præf. W. de mandato nostro obsequio nostro alibi intendat, & præf. I. prægnans sit & gravida, ac prædict' B. languidus & impotens sui existit, per quod prædict' W. apud Westm' ad diem in brevi contentum venire non potest, nec prædict' I. & B. ad dict' diem & locum laborare non suffic' ad cognit', &c. Nos eidem W. grat' volentes facere specialem in hac parte, & statui eorundem I. & B. compatiens in hac parte.

[147.]

A And if he in the Reversion will levy a Fine of his Reversion unto another upon a Writ of Covenant sued forth against him, the Conufance shall be taken in the Common Pleas, but the Fine shall not be ingrossed until the Tenant for Life have attorned; and the Fine is said to be engrossed, when the Chirographer maketh Indentures of the Fine, and delivereth them to the Party to whom the Conufance is made, and then it is said, that the Fine is engrossed, and after that the Conufee shall not have a *Quid juris clamat* against the Tenant for Life. But the Course is, when he in the Reversion upon the Writ of Covenant sued against him, maketh the Conufance of the Reversion by Fine, &c. then upon that the Conufee shall have a *Quid juris clamat* against the Tenant for Life; and if the Tenant for Life be so weak that he cannot travel, then he may sue a *Dedimus potestatem* directed to the Justices to take his Conufance, &c. and to certify the same into the Common Pleas, &c.

22 H. 6. 13.  
1 E. 3. No  
*Quid juris clamat* lies after Judgment. Plow. 431.

And the like Writ of *Dedimus potestatem* shall be granted, where the Lord by Fine granteth the Services of his Tenant unto another upon a Writ of Covenant sued against him. If the Conufee sue a *Per quæ servitia* against the Tenant, then if he be weak or sick, he may sue a *Dedimus potestatem* to take his Conufance, &c. and to certify the same, &c. But now the Course is for to admit the Defendant in a *Quid juris clamat*, or *Per quæ servitia*, to make Attorney after a Plea pleaded; and that especially where he pleadeth such Plea, that he shall forfeit his Estate, if it be found against him, &c. then it is clear, that he shall make Attorney after the Plea pleaded; and the Course is now to make Attorney after Pleading; and if he be adjudged to attorn, to award a *Distringas ad attornandum* against him, &c.

2 H. 5. 1.

4 Mar. Dy. 166.

B And if a Man have a Writ of Covenant against one to levy a Fine, and thereupon a *Dedimus potestatem* directed to a Judge to take the Conufance of the Party, and the Judge doth take the Conufance by Force of the Writ, and will not certify the same in the Common Pleas, then the Party may sue a *Certiorari* directed to the same Judge, reciting all the Matter how he hath taken the Conufance, commanding him by the Writ to certify the same into the Common Pleas: And upon that an *Alias*, and *Pluries*, and Attachment to the Judge, if he will not certify it or return it, or shew Cause why he do not certify it. And if the Judge be dead who took the Conufance, he may have a *Certiorari* to his

Executors, and an *Alias*, and *Pluries*, and Attachment, *vel causam nobis significes* ; and in the End of the Writ shall be this Clause : *Et habeas ibi hoc breve, per quod cognitiones prædictæ recepistis, & hoc breve. Mandamus enim Justicis nostris de banco prædictæ quod cognitiones & brevia prædictæ sub sigillo nostro eis misistis, quod ea a vobis recipiant. Teste, &c.* And by that it appeareth, that although the *Certiorari* be sent to the Judge to return the Conufance taken before the Justices of the Common Pleas, that yet he ought to sue forth another Writ to be sent and directed to two Justices of the Common Pleas, to receive such Conufance taken : And the Writ of *Certiorari*, which shall be directed unto the Justices of the Common Pleas to receive the Conufance, is in the Register amongst the Writs of Covenants.

And if a Man will levy a Fine of Lands holden of the King in Chief, then he ought to have a special Writ unto the Justices of the Common Pleas, thus :

*Rex Justicis suis de banco salutem. Cum per literas nostras patentes de gratia nostra speciali concessimus L. quod ipse de maneriis suis de N. & I. cum pertinens quæ de nobis tenentur in capite feoffare possit W. &c. recitandæ totam chartam (usque ibi) prout in literis nostris prædictæ plenius contineatur, ac breve nostrum de conventionione pendeat coram vobis in banco prædictæ inter prædictæ I. & W. de maneriis prædictæ ad finem inde inter eos secundum legem & consuetudinem regni nostri levandæ ut accipimus, Vobis mandamus, quod finem illum inter partes prædictæ coram vobis in eodem banco levare permittatis juxta tenorem literarum nostrarum prædictæ, &c.*

And if it do appear unto the Court, that the Lands are holden of the King in *Capite*, the Court *ex officio* ought not to suffer such Fine to be levied without such a Writ directed unto them, declaring the King's Pleasure.

And there is another Writ of *Certiorari* directed unto the Treasurer and Chamberlains of the Exchequer, to certify the Transcript of a Fine in the Chancery ; and a Writ of *Mittimus* out of the Chancery directed to the Justices of the Common Pleas to transcribe the said Fine, &c.

And another Form of Writ of *Certiorari* directed unto the Chirographer, to certify into the Chancery *tenorem cujusdam notæ in Curia Domini E. nuper Regis Angliæ, &c.* as appeareth in the Register.

### *Writ of Dower unde Nihil habet.*

29 Aff. 68.  
Br. Dow. 63.  
Dower lieth  
not against  
Guardian  
in Socage,  
and there-  
fore it is doubted if such a Guardian shall assign Dower if there be a Disseisin.

**A** Writ of *Dower, unde Nihil habet*, lieth, in Case where a Woman E taketh her Husband, who is sole seised of Lands or Tenements, to him and his Heirs in Fee-simple, or unto him and the Heirs of his Body, &c. Or if the Husband during the Marriage betwixt him and his



his Wife, be solely seised in Fee-simple, or in Fee-tail of such Estate, that the Issue begotten betwixt him and his Wife may inherit the same, then if the Husband doth alien the same, or dieth seised thereof, or be thereof disseised, and dieth, his Wife shall have a Writ of *Dower, unde Nihil habet*, against him who is Tenant of the Freehold of the Land, or against him who is Guardian in Knight's Service of the Land; and the Form of the Writ is,

[148.]

A Rex Vic', &c. Præc' A. quod juste, &c. redd' B. quæ fuit uxor C. rationabilem dotem suam, quæ ei contingit de tenemento quod fuit prædict' C. quondam viri sui in N. unde nihil habet ut dicit. Et unde queritur, quod præd' A. ei desorc' & nisi, &c. (a)

And against the Guardian the Writ is such: Præcipe A. Custod' terræ & hæredis J. quod reddat, &c. B. quæ fuit uxor C. &c. (b)

Otherwise where the Wife is endowed *ad ostium Ecclesiæ*, thus: Præc' A. quod, &c. redd' B. quæ fuit uxor C. Centum acr' terræ cum pertin' in N. de quibus prædict' C. quondam vir ipsius B. eam dotavit ad ostium Eccles. quando eam desponsavit, unde nihil habet, &c.

And if she be endowed *de assensu Patris*, then thus: Præc' A. quod, &c. redd' B. quæ fuit uxor C. Centum acr' terræ, &c. de quibus prædict' C. filius & hæres ipsius A. quondam vir ipsius B. de assensu & voluntate ipsius A. patris sui eam dotavit ad ostium Eccles. &c. unde, &c.

B And the Writ of Dower *unde nihil habet*, may be sued in the County before the Sheriff by a *Justicies*.

Perkins 67, 68. Common sans numbr. &c. Estovers. Old Na. Br. 5. 2. E. 3. Dower 23.

C (c) And a Wife shall be endowed of Advowsons, Villains, Commons of Pasture, and of other Profits, or Liberties, of which her Husband had any Estate of Inheritance; which Estate the Issue betwixt them by Possibility may inherit, &c.

D And the Wife may sue a Writ of *Dower* of Lands or Tenements in *London*, and the Writ shall be directed unto the Mayor and Sheriffs of *London*; and the Writ shall be such:

Rex Majori & Vic' Lond' salutem. Præcip' vobis quod justicietis A. quod juste & sine dilatione, & secundum consuetud' Civitatis nostr' London' redd' B. quæ fuit uxor C. rationabilem dotem suam, quæ ei contingit, &c. in Lond' & justic' D. quod juste, &c. & secundum consuetudinem, &c. reddat eidem B. rationabil' dotem suam, &c. in eadem Civitate, unde nihil habet, &c. ut dicit, & unde querit' quod præd' A. & D. ei desorceant, sicut rationabiliter monstrare poterit, quod ei reddere debeant, ne amplius, &c. Teste, &c.

And by that it appeareth, that a Woman shall have a Writ of *Dower* in *London*, against several Tenants by a several *Justicies* in one Writ,  
Y y 2 as

(a) Note; Altho' the Writ is conditional, *Nisi*, &c. yet the Demandant is not bound to accept Tender *in pais*, for then he would lose his Damages, &c. nor is the Tenant bound to render himself there, and yet he may plead *semper paratus*. 11 H. 4. 62.

and if he be Guardian both of the Land and Body, he ought to be so named in the Writ, or else it shall abate. 18 E. 2. Brief 822. Also he ought to make him Heir by the Writ, to him that was last seised. 11 Brief 473.

(c) N. B. 5. Perk. 68. Post. 149. K. 12 E. 3. Lower 90.

(b) 9 H. 5. 4. Note 13 E. 3. Brief 242.

as well as she shall have a Writ of *Dower* against several Tenants by several (a) *Præcipes*, and all in one Writ. And the Process is Summons, *Grand Cape* and *Petit Cape* in the Common Pleas.

### (b) Writ of Admeasurement of Dower.

Post. 149. B. **T**HE Writ of *Admeasurement of Dower* lieth, where the Heir when he is within Age endoweth the Wife of more than she ought to have Dower of : Or if the Guardian endow the Wife of more than of the third Part of the Land of which she ought to have Dower : Then the (c) Heir at his full Age may sue this Writ against the Wife, and thereby she shall be admeasured ; and the Surplusage which she had in Dower shall be restored to the Heir ; but in such Case there shall not be assigned anew any Land to hold in Dower, but to take from her so much of the Land which amounteth to above the third Part of all the Land of which she ought to be endowed.

And if the Heir within Age before the Guardian enter into the Land, do assign to the Wife more Land in Dower than she ought to have, then the Guardian shall have the Writ of *Admeasurement* against the Wife by the Statute of *West. 2. cap. 7.* And if the Guardian bring the Writ, and do pursue it against the Wife ; yet the Heir at his full Age by the same Statute, shall have the *Writ of Admeasurement of Dower* against the Wife.

And the Writ is *Vicontiel*, and shall be sued in the County before the Sheriff, and the Writ is such :

(d) *Rex Vic', &c Questus est nobis A. filius & hæres B. quod C. quæ fuit uxor prædict' B. plus habet in dotem de liber' tenem' quod fuit prædict' B. quondam*

(a) *A.* brings Dower against *B. de Libero Tenemento* in *C.* and afterwards before Plaintiff made, brings another Writ in the same Vill, against the same Tenant, this Writ shall abate, altho' that no Plaintiff was made before ; for by *Shard*, one shall not have two Writs of Dower, *unde nihil habet*, at the same Time, in the same Vill, except it be on some special Matter, as if the Tenant purchase other Tenements after the former Writ, whereof she is dowable. 11 *E. 3. Brief* 476. *contr.* 39 *H. 6. 12.*

(b) *Note* ; View is not grantable in this Writ ; Adjudged 17 *E. 3. 67. contr.* Adjudged. 18 *E. 3. 20.*

(c) And it seems, that the Heir within Age shall not have *Admeasurement of Dower.* (See 149. B. *contr.*) of his own Assignment. 7 *E. 2. Admeasurement* 13. And *Note* ; If the Heir of Age assign, he shall not have this Writ against his own Assign-

ment. 6 *H. 3. Admeasurement* 18.

And *Note* ; It need not be acknowledged of whom the Assignment is held. 17 *E. 3. 66.*

(d) See 13 *E. 3. Admeasurement* 17. and yet by *Bract. Li. 4. c. 17.* If she has Lands in Dower, in divers Counties, there it ought to be *cora' Justiciar'*. And *Note* ; there the Tenant shall have several Writs, *viz.* (1.) In every Writ of *Admeasurement*, all the Lands which she has in the same County shall be named, and admeasured. (2.) If she has Lands in several Counties, there shall be several Writs, and several Extents of all the Lands of which the Party died seised, as it seems ; yet he shall have one Count, and one *Admeasurement* ; *sed Quære*, how it shall be made. 13 *E. 4. Admeasurement* 17. Yet *Note* 7 *R. 2. Ibid.* 4. the Defendant was to answer, notwithstanding the Exception. 7 *R. 2. Admeasurement* 4.



B. *quondam viri sui in N. quam habere debet, & ad ipsam pertinet habend'.* Et ideo tibi præcipimus, quod iuste & sine dilatione Admensurari fac' dotem illam, ita quod præd' C. non habeat plus in dotem de hæred' prædict' A. quam habere debet & ad ipsam pertinet habend' secund' rationabilem dotem suam. Et prædict' A. habeat de dote illa, id quod habere debet, & ad ipsam pertinet habend' ne amplius' &c. Teste, &c.

And for the Guardian the Writ is such: *Questus est nobis A. Custos terr' & hæred' E. quod C. que fuit uxor præd' E. plus habet in dotem ipsius, &c. (usque ibi) ita quod præd' C. non habeat plus in dotem de hæred' prædict' hæredis quam habere debet, &c. Et quod prædict' custos habeat de dote illa, &c. ne amplius, &c. Teste, &c.*

H And when the Plea is in the County, the Plaintiff may remove it without Cause, and the Defendant may remove it with Cause in the Writ, as in a Replevin. And if the Writ be removed in the Common Pleas by a *Pone*, and Process be awarded against the Defendant according to the Statute which is Summons, Attachment and Distress, &c. Then the Sheriff cannot make the Admeasurement, but to extend all the Land particularly; and to return the same into the Common Pleas, and thereupon the Admeasurement shall be made by the Justices.

I (a) And if the Guardian assign for Dower, &c. more than she ought to have, and afterwards grant over his Estate, his Assignee shall not have a Writ of *Admeasurement* (b).

And so if the Heir within Age assign unto the Wife more in Dower than she ought to have, &c. The Guardian in Right may have a Writ of Admeasurement; but if he grant over his Estate, his Assignee who is Guardian in *Fait* shall not have the Writ, because it was a Thing in Action given to his Lessor, &c. and the Heir shall have a Writ of *Admeasurement of Dower*, for Dower assigned in the Time of his Ancestor.

A And if a Woman be endowed in Chancery by the King, &c. the Heir shall have a Writ of *Admeasurement* against her if she have more assigned to her for her Dower than she ought for to have.

B And if the Guardian do assign Dower more than she ought to have, the Heir during his Nonage shall not have a Writ of Admeasurement, but if he himself assign more for Dower than she ought to have, &c. then

[149.]

14 Aff. pl. 4.  
Perk. 19. d.  
7 H. 2. Ad-  
measure-  
ment 4.

12 H. 6.  
Admeasure-  
ment 9.  
7 R. 2. 17  
E. 3. 67.  
7 E. 2. Ad-  
measure-  
ment 13.

(a) Note; These Points are well resolved.

(1.) If the Guardian assigns Dower, and grants over the Ward, the Grantee shall not have *Admeasurement*. (2.) If the Ancestor assigns Dower and dies, the Guardian of his Heir shall not have *Admeasurement*, but his Heir shall have it, and so it seems, tho' the Ancestor was within Age at the Time. (*Vide Post*. 149.) (3.) Where the King seises a Ward, where he has no Right, the Ward sued an *Ouster le Main*, and had it, *Salva dote*; it seems in such Case, the Ward shall have Admeasurement; *contr.* if he had been Assignee, or Grantee of the King. 7 R. 2. *Admeasure-*

*ment* 4. Note there, where a Disfeisor endows the Feme of more than a third Part, the Heir shall have an Affise.

(b) If on a Recovery of the third Part in Dower, the Sheriff assigns a Moiety, &c. the Tenant has Remedy against the Sheriff by Affise, or he may have a *Scire facias* against the Sheriff to assign *de novo*. 22 R. 2. *Execution* 165. See 21 H. 7. 29. If an Infant assigns for Dower more than he needs, he shall not avoid it by Entry. See 10 E. 3. 31. Dower shall not be *admeasured* by a Writ of Dower. 19 E. 3. *Quare Im-*  
*pedit* 154.

then it seems reasonable, that he himself during his Nonage have the Writ of *Admeasurement* of Dower.

(a) But if the Wife after the Assignment of Dower do improve the Land, and make it better than it was at the Time of the Assignment; an *Admeasurement* doth not lie of that Improvement. But if the Improvement be by Casualty of a Mine of Coals or of Lead, which are in the Land, &c. which have been occupied in the Husband's Time, the Doubt is the more; but she cannot dig new Mines; for that shall be Waste if she so do.

Dr. and Stud. And if the Ancestor dieth seised, and the Husband die before he D  
84. entreth into the Land, yet the Wife shall be endowed, although her Husband had but a Possession in Law. 7 E. 3. 66. 21 E. 3. 31. 3 H. 7. 103.

Perkins 89. But a Man shall not be Tenant by the Courtesy of the Wife's Land, 91. 3 H. 7. 5.  
21 E. 3. 21. if his Wife had not a Possession in Deed, if it be not in special Cases; as of Advowson or Rent, where she dieth before the Day of Payment of the Rent.

N. Br. 8. And in that Case, if the King's Tenant die seised, and the Heir die before he enter; then the Wife shall be endowed.

1 H. 7. 17. But if the Heir enter and intrude upon the King's Possession, and 4 H. 7. 1. afterwards die before he sueth his Livery; the Wife shall not be endowed by the Statute of *Prærogativa Regis*, cap. 12. which is, that if the Heir intrude upon the King's Possession, that *Nullum accrescit ei liberum tenementum*, &c.

2 H. 4. 7. (b) Where a Woman taketh a Lease for Years of Land, she shall E  
Perkins 96. not be endowed of the same Land during the Term.  
d.

And where the Estate which the Husband hath during the Marriage F  
41 E. 3. 30. is ended, there the Wife shall lose her Dower. As if Tenant in Tail do discontinue in Fee, and afterwards taketh a Wife and disseiseth the Discontinuee, or the Discontinuee doth enfeof him, and afterwards the Tenant in Tail dieth seised, his Heir is remitted, and the Wife shall lose her Dower, because the Heir is in of another Estate of Inheritance, than the Husband had during the Coverture.

And so if a Man have Title of Action to recover any Land, and afterwards he entreth and disseiseth the Tenant of the Land, and dieth seised, and his Heir entreth, the Heir is remitted unto the Title which his Ancestor had, and the Husband's Wife shall lose her Dower; for that Estate which the Husband had is determined, for that was an Estate in

(a) 14 H. 3. *Admeasurement* 10. 13 E. 1. *Ibid.* 17.

(b) See accordant, where a Feme took the Commitment of the Guardianship by the King's Grant, without any Exception of Dower, and she was barred of her Dower during the Heir's Nonage. 2 H. 4. 7. but if the Husband be attainted, and dies, and the Feme takes a Lease for Years of the King's Grant of his Lands, and afterwards by Act of Parliament, or by Rever-

sal of the Judgment, (the Heir of the Husband being in the King's Ward, for that the Tenements were entailed,) now she shall have her Dower, because it was before, (after) her Title of Dower commenced; and so if A. makes a Lease to B. for Years, and they inter-marry, and A. dies within the Term, the Feme shall be endowed. 6 H. 4. 7. 8. Sir John Cornwall's Case. See Dyer 76. a Feme Tenant at Will brings Dower of the same Lands.



in Fee by Wrong, and the Heir hath the Estate in Fee which his Ancestor had by Right. 16 E. 3. 21.

G (a) If a Man make a Gift in Tail, reserving Rent to him and his Heirs, and afterwards the Donor hath a Wife, and the Tenant in Tail dieth without Issue, the Wife of the Donor shall not be endowed of the Rent, because the Rent is extinct, for it was reserved upon the State-Tail which is ended: But although that the Tenant in Tail dieth without Issue, yet his Wife shall be endowed, because the Land continueth and his not determined as the Rent is. 10 E. 3. Avowry 159. Perk. 63. d.

H If the Grandfather dieth seised, and after the Father dieth seised, and the Son hath the Land, and then the Wife of the Grandfather, is endowed of the third Part of the Land and dieth, yet the Wife of the Father shall not have Dower of that third Part, because *dos ex dote peti non debet*. 46 E. 3. 24. Finchden. Perkins 62. 45 E. 3. 13. Ant. 148. C. 45 E. Dower 5. 8 E. 2. Entry 75.]

I And if the Husband be Tenant in Common with two others in Fee of certain Lands, and dieth, his Wife shall be endowed of the third Part of that Land, only with Metes and Bounds to hold in Common, &c.

K And if a Wife be endowed of a Mill, or of an Office, she shall have the third Part of the Profits thereof assigned unto her, and she shall have a Freehold in the third Part of the Mill, &c. M. 45 E. 3.

L (b) A Woman of the Age of nine Years or more at the Death of her Husband, shall have Dower of his Land. And if she be of less Age at the Death of her Husband, then she shall not have Dower. 45 E. 3. Dower 50. 1 H. 5. 1 Perkins 67. g. Litt. 8. 12. H. 4. 1. Dr. and Stud. 13.

M (c) If a Woman be endowed, and afterwards loseth by Action tried, if she pray in Aid of him in the Reversion, she shall be new endowed of that which remaineth (d).

N If the Husband exchange Land, &c. and afterwards dieth, if the Wife have Dower of the third Part of the Land taken in Exchange, she shall not have Dower of the other Land, &c. which was given in Exchange. 1 Inst. 31. b. Perk. 63.

O If a Woman be Guardian in Socage, and she bring a Writ of Dower against a Stranger, he may plead, that she holdeth other Land in Socage of which she may endow her self, *de le plus beale*, and then the Wife upon that may endow her self of those Lands unto the Value of the third Part, which she ought to have of the other Lands which the Guardian holdeth, &c. And whether she may endow her self of the *plus beale* unto the Value of the third Part which she ought to have of her. Litt. 10. d. That he hath a Freehold. 45 E. 3. 6. Candish. ac. to this here.

(a) Note; If Rent be granted to I. S. and his Heirs on Condition, that if the Grantee or his Heirs die, his Heir within Age, the Rent shall cease during the Nonage, &c. the Feme shall recover Dower of the Rent against the Tertenant, but *cessat Executio* during the Nonage. 12 E. 3. Dower 11. 22 E. 3. 19. 10 H. 7. 13. 5 E. 2. Dower 153. 10 E. 3. 21. Perk. 62, 63. 46 E. 3. 24. 12 E. 3. Cond. 11.

(b) Co. Lit. 33. a. 7 H. 6. 11. 12 R. 2. Dower 54. of whatsoever Age the Husband be. See 1 Inst. 384.

(c) See 4 E. 3. 25, 36. 50 E. 3. 7. Yet there seems to be this Diversity, if a Feme be endowed by a Disseisor, she shall have the Warranty, &c. but if she recovers the Lands only, which are granted over by the Heir, she has lost her Warranty against the Grantee. 7 E. 3. 7. 21 E. 3. 48. 10 E. 3. *Quid Furis* 41.

(d) And she shall have Election to be endowed of what Part thereof she will. See Co. Lit. 31. b. Perk. 63.

her Husband's Land or no, *Quære*; for some hold, that Dower *de plus beale* shall endure but during the Minority of the Heir who is in Ward.

[150.]

The Son would have endowed his Wife of a Reversion of Land A which one held for Life, *ex assensu Patris*; and it was holden, that it was not good, *M. 4 E. 3.* because it was not in Possession; whereof a Right of Dower may be claimed. *4 E. 3. Dower 117. 6 E. 3. 34. Perk. 86.*

22 E. 3.

Dower 131.

Perk. 64. 2.

And the Writ of Dower *ex assensu Patris* lieth as well against the B Guardian, as against the Tenant of the Freehold.

If the Tenant fore-judge the *Mesne*, yet the Wife of the *Mesne* shall C be endowed. *Perk. 84.*

5 E. 3.

Dower 149.

If a Man recover in Value against the Husband by a Warranty *Ann- D cestrel*; yet the Wife shall be endowed, because the same is by Force of the Warranty made, and not by Reason of Eigne Title to the Land. *5 E. 3. Dower 139.*

The younger Son shall not assign Dower to his Wife *ex assensu Patris E* of the Father's Land, because he is not Heir apparent. *Litt. 9. a.*

Perk. 68. 2.

13 E. 19.

Dower 161.

If the Husband enter into Religion, the Wife shall not have Dower F during his Life. *Perk. 61. 32.*

The Wife shall have the third Part of the Advowson for her G Dower. *1 E. 1. Dower 176.*

43 E. 2. 19.

Perkins 70. b.

If the Wife do elope from her Husband, and remain with the Adul- H terer, she shall lose her Dower; but if she remain in Adultery upon the Husband's Lands or Tenements, she shall have Dower, because the same is not an Elopement. *Inst. 32. b. Perk. 170. D.*

If the Husband be attainted of Felony by Outlawry or otherwise, I she shall lose her Dower.

If one Joint-tenant make a Feoffment of his Part, his Wife shall not K be endowed because her Husband was never sole seised. *34 E. 1. Dower 179.*

Endowment *ex assensu matris*, is good, but *ex assensu fratris*, it's hol- L den it is not good. *9 H. 3. Dower 19. 8 E. 2. Dower 167. contr.*

And Dower *ex assensu patris* after the Marriage, is good.

3 H. 6. 4.

Lessee for

Life maketh

a Feoffment

in Fee; his

Wife shall

have Dower

against the

Feoffee, but

not against

the Lessor.

If a Man marry a Woman in a Chamber, Dowment *ad ostium Came- M ra*, is not good. *2 H. 3. Dower 198. 1 Inst. 34. a.*

Dowment *ad Ostium Ecclesie* of the Moiety of the Land, is good.

And a Woman married in a Chamber, shall not have Dower by the N Common Law, *H. 16 H. 3. Quære* of Marriages made in Chapels not consecrated, &c. for many are by Licence of the Bishop married in Chapels, &c. And it seemeth reasonable, that in such Cases she shall have Dower. *1 Inst. 34. b. 10 H. 3. Dower 200, 201. Perk. 61.*

And in some Places the Wife shall have the Moiety in Dower, as in O Gavelkind. *1 Inst. 33. b. Litt. 8.*

And in some Cities she shall have all by the Custom which is called p Free-Bench, &c. And *Glarvil* saith, that *ad ostium Ecclesie*, a Man cannot assign more than the third Part in Dower, and if he do the Wife shall be admeasured, &c. but less may be assigned by Law; yet at this Day it seemeth, that the Assignment *ad ostium Ecclesie* of more than the third Part, is good, and she shall not be admeasured for it. *Ibid. contr. 1 Inst. 36. a.*

And



Q And the Wife shall not be distrained in the Lands which she holdeth in Dower, for the Debts of the Husband in his Life due to the King, nor in the Lands of Inheritance of the Wife, nor in the Lands which she hath by Purchase made by the Husband to him and his Wife, and unto their Heirs; and if she be distrained by the Sheriff, she may sue forth such Writ. 50 Aff. 5. 'Tis otherwise of a Lease for Years. See 8 Co. 171. Fleetwood's Case.

*Rex Vic', &c. Cum secund' legem & consuet' Regni nostri Angl' mulieres in terris & tenement' quæ tenent in dotem de dono viror' suorum, vel quæ sunt de hæreditate sua, vel quæ sibi perquisiver' pro debitis virorum suorum reddend' distringi non debeant, ac tu B. quæ fuit uxor A. distringis in terris & tenement' suis, quæ tenentur in dotem de dono prædict' A. & etiam quæ fuer' de hæred' ipsius B. sicut ex querela sua accepimus: Tibi præcipimus, quod ipsam B. in terr' & tenemen' suis quæ tenentur in dotem, vel sunt de hæreditate sua propria, vel ex quæsito ipsius B. pro debito ipsius A. quondam viri sui redd' non distringi fac' contra legem & consuetudinem prædict', & distractionem quam, &c. ei deliberari fac', &c. Teste, &c.*

There is another Form of Writ in the Register for Tenant in Dower, which is directed unto the Sheriff, commanding him that he do not distrain the Wife in those Lands which she holdeth in Dower, or of her own Inheritance, for the Husband's Debt; but that Writ hath these Words in the End of the Writ, *Dum tamen hæredes & executores testamenti ipsius A. ad debita illa nobis reddend' sufficient' non distr'*, &c. And by these Words in the Writ it seemeth, that if the Heir of the Executors have not sufficient of Lands or Goods to pay the Debt, that the Wife shall be charged and distrained for the Debt of the Husband in those Lands. But it seemeth reasonable, that the Wife shall not be charged or distrained for the joint Purchase made to her Husband and her, nor for her Lands of Inheritance, nor in the Lands wherein she hath Title of Dower before the Husband become (a) indebted unto the King. And that the first Writ is according to Law for those Cases. But if the Husband be indebted unto the King before she have Title of Dower, it seemeth to be otherwise.

And there is another Writ in the Register for the Wife directed to the Sheriff, that he do not distrain her in Lands or Tenements which her Husband and she purchased jointly before the Husband was indebted to the King, if they purchase the Land jointly to them in Fee, the Lands after the Death of her Husband in the Hands of the Wife and her Heirs shall be discharged of the Debt; and if he be distrained that he deliver them again to the Wife.

And by the same Reason, although the Husband be before indebted to the King; that if he and she purchase the Land jointly in Fee to them, after the Death of the Husband, the Wife and her Heirs be discharged of that Debt. And there is another Writ in the Register, for the Tenant in Dower, directed to the Sheriff, that he do not distrain the Wife for the Husband's Debt, because that the Heir, who

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ought

(a) See 40 Aff. 36. 50 Aff. 5. Dyer 224. Sir William St. Loz's Case, acc.

ought to pay the same out of the Lands, is within Age, and in Ward to the King. Or because that other Tenants who should be charged with the Payment thereof, are omitted (a).

And so it seemeth, the Lands of the Tenant in Dower shall be discharged, if there were other Lands of the Husband to pay the Debt. And those Writs appear in the Register, fol. 142, 143.

[151.]

\* Vi. 50 Aff.  
5. Br. charge  
34. The Husband and  
Wife before  
Marriage  
purchase a  
Lease for  
Years, the  
Husband  
dies, the  
Wife extends  
the Lease for the  
King's  
Tithes.

\* And another Writ directed to the Sheriff, that he do not distrain A the Wife who holdeth Lands in Dower for the Debts of the Husband which he owed to the King before the Contract of Marriage between him and his Wife, nor the Lands which the Husband and Wife purchased jointly in Fee, for the Husband's Debts, which he became Debtor for, before the Purchase. And she may have such Writ out of the Chancery directed unto the Treasurer and Barons of the Exchequer, commanding them that they enquire thereof, and if they find the same, that they surcease and discharge the Wife with this Proviso in the Writ: *Proviso, Quod debita illa de execut' & her' præd' A. ac tenent' terrar' quod sua fuer' & que inde de jure debent onerari ad opus nostr' levent' ut justum est. Teste, &c. Contra of a Lease for Years. 50 Aff. 4.*

### Writ de Consuetudinibus & Servitiis.

3.  
it 28.

THE Writ of Customs and Services is in its Nature a Writ of B Right, and lieth sometimes for the Lord who hath a Fee in the Seigniori, and sometimes for the Tenant in Tail of the Seigniori, or for Tenant in Dower, or Tenant for Life, or for him that hath a less Estate than a Fee, and the Writ is Close, and not Patent, and shall be directed unto the Sheriff, and shall be retournable sometimes into the Common Pleas, at the Pleasure of him who sueth the Writ. And that Writ may be sued in the County before the Sheriff by a *Justices*.

And the Writ lieth where the Tenant doth deforce the (b) Lord of C the Service which he ought to do, or of the Rent which he ought to have, as well as of Service. And the Form of the Writ which is retournable in the Common Pleas is,

*Rex Vic', &c. Præc' A. quod, &c. faciat B. consuetud' & servic' quod D ei facer' (c) debet de libero tenemento suo, quod de eo tenet in G. ut in redditibus, arreragiis, & aliis: Vel sic; in Homag' releviis & al': Vel sic; in sectis cur' & aliis' & nisi, &c.*

And if the Party were not seised of the Services and Tenements which he claimeth, but his Ancestor, then he shall not say in the Writ, *ut in arreragiis, &c.* But Omission shall be made in the Writ of the Services.

And

(a) See *Rot. Parl.* 18 E. 1. fol. 14. accordant.

(b) *Viz.* Against the Mesne, but not against the Tertenant. 31 Aff. 31.

(c) Note; If the Writ be *Debet & Solet*, no View lies *per Shard.* 11 E. 3. See 18 E. 3. View 161.



**E** And if the Writ be sued in the County before the Sheriff, then the Writ is such :

*Rex Vic', &c. Justicies A. quod', &c. fac' B. cons. & rest' servic', &c. ut supra, sicut rationabiliter monstrar' poterit, quod, &c. ne amplius, &c.*

**F** And a Man may sue several Tenants by one Writ of Customs and Services by several *Præcipes* in the Common Pleas, or by one Writ and diverse *Justic'* in the Writ, which shall be directed unto the Sheriff to hold Plea upon them. But if the Writ of Customs and Services be sued against several Tenants by several *Præcipes* in the Writ, and returned into the Common Pleas, then all the *Præcipes* shall be put together thus. *Præcipe A. quod fac' B. &c. Et præc' C. quod, &c. fac' D. &c. Et præc' F. quod, &c. fac' G. &c.* And in the last *Præcipe* shall put this Clause, *In redditibus & aliis*, and this Word *arreragiis* shall be left out.

**G** And when the Writ is in the Right only, then he shall count of the Seisin of his Ancestor, and the Writ only in the *Debet*; but when he counts of his own Seisin, then the Writ is in the *Debet & solet, &c.* 2 E. 2. Fitz. Droit 28.

**H** And Disclaimer lieth for the Tenant in this Writ against the Demandant (a).

**I** And note that if he say in the Writ, *Ut in redditibus & arreragiis*, that these Words prove that the Demandant himself was seised of the Services, and then if he count in such Writ of Seisin of his Ancestors, and not of his own Seisin, the Writ shall abate; *quod vi. 30 E. 1. Title Droit.* N. B. 38. the Disclaimer ought to be in a Court of Record and not in the County.

**K** (b) But if he will bring a Writ of Customs and Services of the Seisin of Ancestors, he ought to leave out these Words out of the Writ, *Ut in redditibus & arreragiis, &c.*

And a Writ of Customs and Services doth not lie against Tenant in Frank-marriage, until the fourth Degree be past, &c. if not, that he hath done Homage to the Lord, &c. for by so doing he is concluded, &c.

**L** And if a Man will bring a Writ of Customs and Services against any Tenant, and by his Count demand Homage, then the Writ ought to make special Mention thereof, as to say *Ut in homagio, &c.* otherwise the Writ shall abate.

**M** And if a Man holdeth divers Manors in several Counties by one Service, &c. if the Lord be deforced or kept from his Services, he shall have several Writs of Customs and Services, for each County one Writ, and shall have them returned at one Day, in the Common Pleas, and then he shall count upon them, as his Case is, which see in the Title of *Droit, 30 E. 1.* Droit 73.

**N** And note that this Writ is a *Præcipe quod faciat, &c.* and where he demandeth Land, then the Writ is *Præcipe quod reddat, &c.* and in this Writ the Mife shall be joined, if the Writ be brought by Tenant in Fee of the Tenancy, by him who hath a Fee in the Seigniory. But if

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the

(a) See F. Droit 28, 49. 7 E. 5. 5 b. (b) 47 H. 3. Droit 52. 31 E. 1. Droit 67.

[152.]

the Writ be brought by Tenant in Dower, or Tenant in Tail, against the Tenant in Fee-simple, it is a Question how the Mife shall be joined. But, I think, the Mife shall be joined in that Case, and the Weakness of the Estate on the Part of the Demandant shall not out the Tenant of the Plea, which the (a) Law giveth him to join the Mife; but if the Writ be brought against the Tenant for Life, where the Remainder is over in Fee, there the Tenant may pray in Aid of him in the Remainder, and then they may join the Mife with the Demandant, &c. But where the Demandant, who hath the particular Estate, bringeth the Action, although he pray in Aid of him in the Reversion to join the Mife, it is hard to be done, &c. But it seemeth reasonable, that the same Law which enableth him to bring the Action, the same Law ought to enable him for to join the Mife upon the Plea of the Tenant. 7 E. 3. 5. b. per Herle.

### Writ of Annuity.

A Writ of Annuity lieth in Case, where a Man granteth unto another a yearly Rent for Life, or for Years, or in Fee out of his Lands, or out of his Coffers, or to receive from his Person yearly at a certain Day; now the Grantee may sue a Writ of Annuity for the same, &c. if he be behind at the Day of Payment, &c. And if it be granted out of the Land with a Clause of Distress, then he may chuse either to distrain for the same, and make it a Rent-Charge, or he may bring a Writ of Annuity for the same. But if he bring a Writ of Annuity for it; if the Defendant appear, and the Plaintiff declare thereupon, then he cannot distrain for it after. And in like Manner, if he do distrain for it and avow, then he shall not sue a Writ of Annuity for the same Rent. But if a Man grant a yearly Rent for Life, for Years or in Fee, and doth not express in the Grant that it shall be taken out of any Lands or Tenements, nor any Distress granted for Non-payment thereof, then it is meerly taken for an Annuity; and he shall not have any other Remedy for the same, but a Writ of Annuity.

(b) And this Writ may be sued before the Sheriff in the County by B. Justices as well as in the Common Pleas; and the Form of the Writ in the County is such:

Rem

(a) If one recovers in a Writ of Customs and Services, he shall not have a *Scire facias* in another Writ of Execution, but only *Disfringas*, &c. 10 E. 3. 15. 17 E. 3. 29. yet See 18 E. 3. 23. Execution shall be always had by *Scire facias*, notwithstanding (another) Execution had before. *Vile infra* B.

(b) Note; By Salder, if the Defendant shews an Acquittance of all Arrears, the

Plaintiff shall recover his Annuity, and have always a *Scire facias*, or a *Fi Fa'* afterwards. 30 E. 3. 22. See where nothing was in Arrear, but pending the Writ, and the Abbot recovered on a Plea to the Title, and had Judgment for the Annuity, and also for the Arrears. 39 E. 3. 38. but in a *Scire facias* he shall not recover the Arrears pending the Writ. 9 H. 12. adjudged in Diggs's Case.



*Rex Vic', &c. Præ' tibi, quod justicies A. quod juste, &c. redd' B. centum marcas, decem quarteria frumenti, & xx. robas, quod ei a retro sunt de annuo redditu C. s. duorum quarti' frumenti, & unius robe quæ ei debet, ut dicat, sicut rationabiliter monstrare poterit, quod ei redder' debeat, ne amplius, &c.*

The Plaintiff in Annuity had Judgment to recover Damages, and there-  
Fitz. Mesne.

upon brought a *Scire facias* in B. R. to execute Judgment, and good. 24 E. 3.

And the Form of the Writ in the Common Pleas is,

*Rex Vic', &c. Præcipe A. quod juste, &c. redd' B. cent' marc' & medietatem trium pannorum cum pellura, & duorum pannorum cum sindone, quæ ei a retro sunt de annuo redditu decem marcar' & medietatis unius panni cum furrura, & unius panni cum sindone, quod ei debet, &c. & nisi, &c.*

34 H. 6. 20.  
3 H. 6. Annuity 2. 16  
E. 3. Annuity 22. If a Man bring Annuity

and the same extinguish or determine pendent the Writ, the Plaintiff cannot have Judgment in the Writ, but is put to his Action of Debt. See 2 H. 6. 8. And note, that *Detinue pro quodam Scripto debito*, lies for a Deed of an Annuity. 15 E. 3. Brief 682.

C And note, that in that Writ the Form is, *Quem ei debet*, where he demandeth other Thing than Money. And yet in a Writ of Debt, the Form is, that he say in the Writ, (a) *Quas ei debet*, if not, that he demand Money; for if he demand Robes or Corn, or such like Chattels, the Writ shall be, *Quæ vel quas ei detinet*, and not *debet*, &c.

And in Debt if a Man demand Money, and also ten Quarters of Wheat, then the Form of the Writ is,

*Præ' A. quod juste, &c. redd' B. decem libras, &c. quas ei debet, ac dec' quarteria frumenti quæ ei injuste detinet, &c.*

D And if a Man have an Annuity of 20 l. to receive of A. and he grant 10 l. of the same to another Man to receive of A. A. shall not be charged by that Grant, but the Grantor only by Writ of Annuity: But if he had granted 10 l. Parcel of the said Annuity, it seemeth then that the Grantee ought to charge him who ought to pay the 20 l. by a Writ of Annuity.

9 H. 6. 12.  
and 13.

E And the Writ of Annuity ought to be brought in the County where the Grant was made; but an Annuity to receive from a Man of Religion, or a Body Corporate, or from a Church, ought to be brought where the Church or House is, or where the Seisin is alledged.

And

(a) Note also, this Writ does not lie after the Grant determined by Judgment, or otherwise, but Debt. 16 E. 3. Annuity 22 15 H. 7. 1. and if the Annuity determines pending the Writ, it abates, and therefore See (16 E. 3. Annuity 22) 11 H. 4. 34. if the Grantee of an Annuity for Life recovers the Annuity, and Arrears by Writ of Annuity, and two Years are Arrear after the Judgment, and then he dies, his Executors shall have a *Scire facias* for the Arrears contained in the Judgment; but for the Arrears incurred after the Judgment, he shall have a Writ of Debt, and not a *Scire facias*; for the Annuity is

determined, so that he cannot recover it as an Annuity, *per Cur'*; but 'tis there said by *Hort.* and *Thorn.* against the Opinion of *Hankf.* that where the Grantee of an Annuity for Life with a Remainder to him for twenty Years, recovers in Annuity and dies, his Executor shall have a *Scire facias* always during the Term, because they have the Estate continuing in them, during the Term; *Quere* of an Annuity after the Grant determin'd. 9 H. 6. 16. If one recovers an Annuity, and the Annuity is after in Arrear, and then he dies, his Executors shall not have *Scire facias*, but Debt. 11 H. 6. 38.

42 E. 3. 5. And the Heir shall be charged by a Writ of Annuity upon the Grant F  
acc. 15 E. 4. of the Father, if he have Assets by Descent. But an Annuity shall not  
16. be maintainable against the Heir by Prescription, because it cannot be  
known whether he hath by Descent from the same Ancestor, &c. by  
whom the Annuity was first granted.

Vi. 14 H. And a Writ of Annuity shall be maintainable against a Parson upon G  
4. 18. a Grant made by his Predecessor, with the Assent of the Patron and  
Ordinary; and so upon an Ordinance made by the Ordinary without  
the Patron, if he have *Quid pro quo*.

An Annuity granted by the Bishop with the Confirmation of the  
(a) Dean and Chapter, shall bind the Successor of the Bishop.

(b) And if a Man grant unto another 40 s. or a Robe yearly at such H  
a Day, &c. after the Day he may demand the one or the other at his  
Election. 8 R. 2. *Annuity* 53.

16 E. 3. An- And an Annuity shall be maintainable by a Parson against a Vicar,  
nuity 34. upon an Ordinance of the Ordinary, if he have *Quid pro quo*.

20 E. 3. An- Upon Debate of an Advowson between a Prebend and a Prior, the I  
nuity 32. Ordinary made a Composition and Ordinance, that the Prebend should  
8 R. 2. ib. have an Annuity of 20 s. and the Prior, the Advowson for ever, and  
53. that did charge the Prior in a Writ of Annuity and his Successors, (c)  
T. 9 R. 2.

1 Ma. Dyer And in the Time of Vacation the Patron and Ordinary may by K  
92. their Grant charge the Church for ever, as appeareth in the same  
Year.

9 H. 6. 33. And if the King grant one an Annuity for Life or Years, he ought L  
If a Man to express in the Grant by whose Hands he shall receive the Annuity,  
grant 10 s. as to say, *Per manus Vic' de S. vel ball' nostri' de manerio nostro de S.* and  
Parcel of then the Bailiff or Sheriff shall have Allowance upon his Patent shewed,  
Annuity of if he hath paid the same; and if he have not such Words in the Grant  
20 s. and in if he hath paid the same; and if he have not such Words in the Grant  
Truth there of Annuity, the Grant is void, for he cannot sue the King for it, and  
is no such no Person is bounden to pay the same unto him, if he be not expressed  
Annuity, and named in the Patent, &c. (d) And the Process in a Writ of An-  
the Grant is void. But if  
it be granted to receive out of such a Sum, and there is no such Sum, yet the same is good to charge  
the Person of the Grantor. Vi. *Annuity* 5. to receive *in 10 l. or de 10 l.* no Difference.

nunity

(a) Or by the Ordinance of the Com- Patronage. 31 E. 3. *Grants* 90.  
missary confirmed by the Bishop. 14 H. 4.  
18. on a Debate of Court before the Com-  
missary. See 11 H. 4. 84. and *Note*, the  
Ordinance is to be under Seal. 16 E. 3.  
*Grants* 654.

(b) See accordant 11 E. 3. *Annuity* 27.  
29 *Aff.* 55. But *Note* a Diversity, if it  
be a Thing of Continuance, as Annuity or  
Rent, there he ought to bring his Writ of  
Annuity, or Assise, in the Disjunctive; *contr.*  
if it be *pro hac Vice* only. 9 E. 4. 26. *per*  
*Litt.* 13 E. 4. 4. 43 E. 3. *Bar.* 19. 3 *Aff.*  
175. 11 *Aff.* 8. L. 5 E. 4. 6. 17 E. 3. 75.  
29 *Aff.* 55.

(c) *Viz.* By a Release of the Right of

(d) And if the Defendant makes De-  
fault after Appearance, a *Distingas* shall  
issue *ad audiend' Judicium*. 2 H. 4. 1. *per*  
*Cur*; yet 29 E. 3. 3. a *Distingas ad respon-*  
*send'* issued (to the Tertenant) where the  
Defendant made Default at the Day of  
the *Procedendo*, after Aid by him had of  
the King and the Ordinary. 11 H. 4. 6.  
Judgment on Default of the Parson at the  
Day of Summons to them had and return-  
ed. See 8 H. 6. *Judgment* 262. See a *Di-*  
*stringas* against a Parson in lieu of a *Petit*  
*Cape*, and if he then makes Default, *Judg-*  
*ment* final.



A nuity is Summons, Attachment and Distress. And for Default of Distress, &c. Process of Outlawry, by the new Statute made *Ann.* 23 H. 8. *cap.* 14.

[153.]

Writ de Procedendo ad Judicium.

**B** **T**HE Writ to proceed unto Judgment lieth where Judges of any Court delay the Party, Plaintiff or Defendant, that they will not give Judgment for him when they ought so to do, &c. then the Party grieved shall have this Writ directed unto the Judges; and the Form of the Writ is such :

Post. 24.

*Rex Majori & Vic' Lond' sal'. Quia redd' judicii loquelæ quæ est coram vobis in Hustingo nostro Lond' sine brevi nostro inter A. & B. de quadam transgress. eidem A. per præf. B. illat' ut dicitur, diutinam cepit dilation' ad grave damnum ipsius A. sicut ex querela sua accepimus, vobis præcipimus, quod ad judicium inde redd' cum ea celeritate qua secundum legem & consuetud' civitat' præd' fieri poterit procedat'. Teste, &c.*

**C** And upon that Writ he shall have an *Alias* and a *Pluries* directed unto him, if they will not proceed, and afterwards an Attachment upon **D** that directed to the Coroners, &c. returnable into the King's Bench or Common Pleas, and it appeareth by the Writ that it lieth as well against Judges of Record as other Justices.

**E** (a) If any Man pray in Aid of the King in a real Action, and the Aid be granted, it shall be awarded, that he sue unto the King in the Chancery, and the Justices in the Common Pleas shall stay until the Writ of *Procedendo in loquela* come unto them.

1 Ma. Dyer  
10. the Opin.  
contr.

And then they may proceed in the Plea, until it be come that they ought to give Judgment for the Plaintiff, and then the Justices ought not to proceed to Judgment, until the Writ cometh to them to proceed to Judgment, which is called a Writ *De procedendo ad Judicium*.

7 R. 2. Aid  
de Roy 61.

And

(a) *Note* ; In all Pleas, but in those of Dower, where Aid of the King is granted, there is a Clause *quod non procedant ad Judicium Rege inconsulto*. But in a Writ of Dower, the whole Matter shall be discussed in Chancery before the Writ *de procedendo* comes. 46 E. 3. 29. And *Note* ; there ought to be in the *Procedendo* in Dower an express Clause to proceed to Judgment ; otherwise, if the Writ only commands to do Right and Reason, Judgment shall not be given. 26 E. 3. 58. A *Procedendo ad Judicium* was *quod ad finalem Discussionem procedant*, and thereon the Judges gave Judgment. 29 E. 3. 12. 3 E. 3. 3. *Note* ; If the Tenant in a *Præcipe* prays Aid of the King, by Reason of the Warranty, the Warranty shall be tried in the Chancery,

and a Writ shall be sent into C. B. to take the Enquest; but if they plead in Chancery, and there it appears, that the Demandant has Right, the King shall not have a Writ to C. B. reciting the Matter, and commanding them to supersede, &c. for that Judgment shall be there given, *Quod Tenens eat inde sine die*. 38 E. 3. 14. and *per Thorp*, there. The Right shall not be tried in Chancery, but in Case where the King has the Reversion, the Parson may, but does not pray in Aid, &c. 38 E. 3. 19. and therefore, if the King has a Release of the Annuity, and pleads it, it shall not be brought into Chancery. For the Aid is granted only to maintain or support the Parson, altho' he pleads it. 19 H. 6. *per Newton*. See 13 H. 4. 3.

27 H. S. 9.  
Eliz. Dyer,  
101, 257,  
258. Vi. 28  
H. 6. 4.

And so it is, if the Defendant in a personal Action pray in Aid of the King, and the Aid be granted, now the Judges ought not to proceed until *Procedend' in loquela* comes unto them, and then they may proceed and try the Issues joined; but yet they shall not give Judgment until a Writ cometh to them to proceed to Judgment.

And if the King by his Writ certify to the Justices that the Lands F are seised into his Hands, &c. then they shall stay until the Writ *De Procedendo in loquela* be afterwards sent unto them.

And so, if it appear to Judges of (a) Record, that the Lands are seised into the King's Hands, or if it appear to the Court by pleading or shewing of the Party, that the King hath Interest in the Land, or shall lose Rent or Service, there the Court ought to stay until they have from the King a *Procedendo in loquela*; and if the *Procedendo* be directed unto any of the Judges to proceed, it is good, although it be not directed unto them all.

And if a Man have (b) Aid of the King, the *Procedendo* ought to make Mention of the Aid-Prayer, and recite the same in the Writ, commanding them for to proceed in the Plea, otherwise it is not good.

And

(a) *Viz.* In Affise by the Testimony of the Escheator, or by Affirmance of the Affise in another Writ. See 11 H. 4. 39. But *Note*; If the King purchases pending the Writ, yet this shall not abate the Affise. 11 H. 4. 86. 9 H. 7. 9. and 15. altho' the Party does not pray Aid. See accordant 11 H. 4. 71. if it appears of Record, as by the King's Writ, &c. that the King has (Claims) Interest; and if it be after Verdict, the Justices shall not give Judgment; *contr.* if it be only a Nude or bare Surmise of the Party, *de hors*; but See 3 H. 6. 6. Aid not to be granted in Trespass, without Prayer of the Party.

See a *Procedendo ad Judicium* after the Transcript of the Record certified into Chancery. 13 H. 4. 3.

(b) *Note*; 1. The Party cannot demand Aid after Adjournment of the Plea in another Term, for it ought to be demanded in the former Term, and before Plea pleaded. 3 H. 6. 5. *per* Martin. 2. His Aid-Prayer is, where 'tis for his Advantage to have in Value, and then this ought to be specially entred in the Course of his Aid-Prayer, or otherwise he shall not have in Value. 9 H. 6. 4. Sometimes for Feebleness of the Party's Estate, to plead (or pray) it, then *per* Cott. the Entry is Judgment, &c. *Si Rege inconsulto*. See 15 H. 7. 10. where a Tenant at Will shall have Aid of the King thereupon by Reason of the Temporalities only by those Words. See 9 H. 6. 3. *per* Cott. If one prays Aid of the King, because of the Reversion in him, if he

says, that he holds for Life the Reversion in the King, it is good, without shewing any Deed; and by such Plea, the Reversion is in the King at his Pleasure. 1 H. 7. 29. 11 H. 4. 86. 8 H. 6. 25. So his Bailly shall have Aid.

Sometimes it is to try the King's Patents, as where the King confirms, &c. then only the Judgment is, *Si Rege inconsulto*. 28 Aff. 39. Sometimes it is for (to preserve) the King's Interest, as 1 Aff. 1. and so for a Fee-Farm Rent, &c. due to the King. 2 H. 7. 7. and then in case the King is not to lose, no Aid shall be granted as if one demands Land by a Title puisne to the King's Interest. 35 H. 6. 56. *Note*; The Cause of the Aid is not traversable 9 H. 7. 15. 27 H. 8. 28. For when the Parties come into Chancery, if any Interest can be shewn in the King, altho' it be entred that it was only a Surmise; so if the Cause of the Aid be not sufficient to prove an Interest in the King, yet if he can shew any other Cause, that is sufficient, a *Procedendo* shall not be granted, till the King's Title be discussed. 8 H. 7. 11. and therefore if Aid be granted on such a Cause, for which 'tis not of Right grantable, and afterwards a *Procedendo* is awarded, he shall not have Aid *de Novo* for another Cause. 9 H. 7. 8, 9. 3 H. 6. 6. adjudged. And *Note*; If Tenant in Fee-simple says, that he holds for Life the Reversion in the King, whereupon Aid is granted, if another Title be not shewn in the King, a  
*Procedendo*



G And if Conufance of Plea be granted, &c. in an Action real fued in the Common (a) Pleas, and afterwards in the Franchife, and the Tenant pray in Aid of the King upon a good Caufe, and hath the Aid granted; the *Procedendo* fhall be parted to them in the Franchife.

H And if the King write unto the Juftices to prorogue the Affife becaufe the Defendant is in his Service, yet the Juftices ought to proceed, and not to ftay for the fame.

I And if Verdict pafs for the Plaintiff in Affife of *Novel diff.* before the Juftices of Affife, and before they give Judgment by a new Commiffion new Juftices are made, then the Plaintiff in the Affife may fue forth a *Certiorari* directed unto the other Juftices to remove the Record before the new Juftices, that they may proceed unto Judgment; and the Form of the Writ is fuch:

(b) *Rex dilect' & fidel suo E. salut'. Monstravit nobis H. quod cum ipse nuper arrain' quandam ass. novel' diff. coram dilect' & fidelibus nostris H. de T. & B. nuper Jusiciariis nostris ad ass. &c. assign' per breve nostrum versus R. &c. & alios, &c. contentos, de tenementis in L. ac licet vos & prefat' B. ass. illam secundum legem & consuetudinem regni nostri ceperitis, judic' tamen super veredicto ass. predict' pretextu cujusdam commissionis nostre, dilectis & fidelibus nostris I. de C. & I. de I. de omnibus ass. juratis & certificatis coram quibuscunque Jusiciariis nostris in Comitatu predict' per brevia nostra arrain' capiend' postmodum fact' adhuc restat reddend' in ip-sius H. damnum non modicum & gravamen, per quod expediens est & necesse, quod predict' I. de C. & I. super record' & process. ass. prad' coram vobis & pref. B. habit' certiovent', vobis mand' quod rec' & proc', &c. tangentibus pref. I. de C. & I. sub sigillo vestro distincte & aperte sine dilatione*

A a a

*Procedendo* fhall be presently granted, and 'tis not sufficient there to alledge, that the Land is held of the King's Manor, which is antient Demefne, for that the Tenant there has affirmed the Jurisdiction of the Court by the Aid prayed of the King, and 'tis no Mischief to him, for if he (after) disagrees to the Reversion, if the Plaintiff recovers, he may have a Writ of Disceit. 11 H. 4. 86. adjudged, and therefore, without some other Matter shewn, a *Procedendo* fhall be granted. And Note; if the King be intitled to the Reversion or Remainder by purchase *de Novo*, and not only by Plea of the Tenant on the Aid prayed, no Search fhall be granted further, if Aid has been demanded, or if the King has leased to the Tenant, &c. See 11 H. 4. 86. 9 E. 4. 12. and in Aid granted in personal Actions, no Search fhall be for the King. 27 H. 8. 28.

(a) See 8 E. 3. *Procedendo* 7. and therefore, where the Tenant of a Franchise prays Aid of the King, and thereupon the Plaintiff sues a Resummons, at the Resummons Conufance was granted again. See 10 E. 3. 3. and 21 E. 3. 38. yet 'twas said, that those in the Chancery would

not grant a Writ to the Bailies of the Franchise.

(b) In an Affise, the Party alledges, that the Lands were seised into the King's Hands, and found so by Examination, and afterwards a *Procedendo in loquela non ad Judicium* was granted, and the Parol put without Day, by the not coming of the Juftices, and a general Reattachment was sued before new Juftices in the same County, and all the Records delivered to them, and on a Plea of *Null. Tort*, &c. the Inquest found for the Plaintiff, and now a special Writ of the King came, rehearsing all the Matter, and commanding, *Quod non procederent ad Judicium Rege inconsulto*, and 'twas adjudged.

(1.) That by the general Re-attachment, the Plea of the Party was not terminated.

(2.) For that no Cause to give Day, *ad sequend' versus Regem*, appears before Verdict, the Verdict was well taken; otherwise, if the Juftices had asserted it on the Record, that it appeared by Plea of the Party, and Examination, that the Lands were in the King's Hands. (3.) That they could not proceed to Judgment, without a *Procedendo ad Judicium*. 9 H. 6. 40.

latione mittatis, & hoc breve. Mandamus etiam I. C. & I. quod receptis & visis record' & process. præd' ad iudicium præd' secundum legem & consuetudinem regni nostri procedant, Teste, &c.

And the Party Plaintiff may sue another Writ unto the new Justices, that when the Record is sent unto them by the old Justices, that they receive and look upon the Record, and then to proceed to Judgment; and the Form of the Writ is such :

[154] Rex dilectis & fidelibus suis R. de C. & I. de I. & Justic' ad ass. &c. assign' salut' &c. Monstravit nobis H. &c. (ut supra usque ibi) coram dilectis & fidelibus nostris I. B. & vobis præf. I. de C. nuper Justiciariis nostris, &c. de tenementis in L. & postmod' ad prosecutionem ipsius H. nobis suggerent' præfat' B. & vos præfat' I. de C. ass. illam cepisse, & ad iudicium, &c. distulisse, mandaver' præfat' B. quod record' & process. ass. prædict' coram eo & vobis præfat' R. de C. habit' una cum brevi originali, &c. vobis præfat' R. de C. & I. de I. dilecto & fidei nostro C. de L. postmodum Justic', &c. assign', distincte & aperte mitter' & breve nostrum quod sibi inde venerit, vobis & præfat' R. de C. I. de I. & præfat' C. de L. per aliud breve nostrum dederimus in mandat' quod receptis & visis record' & process. prædict' ad iudicium prædictum secundum legem & consuetudinem regni nostri reddend' procederitis. Et licet idem B. record' & process. ass. præd' coram vobis præfat' R. de C. I. de I. & præf. C. de L. misisset, Iudiciis tamen ass. præd' adhuc restat reddend' in ipsius A. damnum non modicum & gravamen; Nos ea de causa negotium prædictum, quatenus secundum legem & consuetudinem regni nostri poterit, maturari volentes, & eidem H. ulterius inde fieri justitiæ complementum, Vobis mandamus, quod vos vel duo vestrum visis & examinatis record' & processu præd' ad Justic' præd' secundum legem & consuetudinem regni nostri reddend' procedatis. Teste, &c.

And upon that Writ if the Justices do delay to give Judgment he A may have an *Alias*, and afterwards a *Pluries* directed unto the same Justices, *vel causam nobis significetis*; and if the Justices upon the Writ will not give Judgment according to the Writ, *Quere* whether the Plaintiff may have an Attachment against them, because they are Justices of Record.

But see in the Register amongst the Writs to remove Records, many B Writs to proceed to Judgment, &c. of several Forms.

And if the Chaplain of a Chauntry bring an Affise of *Novel diff.* a C against another Chaplain for Lands, and the Defendant claimeth the same Chauntry by the King's Collation and prayeth in Aid of the King; now if the Defendant cannot shew Title in the Chancery for the King, he may have a *Procedendo*, directed unto the Justices of Affise, that they proceed unto the Taking of the Affise, notwithstanding the Allegation made of the King's Collation; and he may sue the like Writ where the Defendant doth pray in Aid of the King in Affise by the King's Grant, and have that granted if he cannot shew Matter in the Chancery, which proves the King's Title, the Plaintiff shall have a *Procedendo*, that they proceed to take the Affise, notwithstanding the Allegation made of the King's Grant.

And



**D** And there are divers Writs in the Register directed unto Justices of Assise, that they do not proceed in the Assise against the Defendant *quomodo sit in servitio Domini Regis* in the War, but to continue them; but these Writs are made by Virtue of an Act of Parliament made for that Time as it seemeth. But if the King certify by his Writ unto the Justices, that the Lands are in his Custody, by Reason of Nonage of any Heir, or by an Inquisition taken and returned in the Chancery, commanding that they do not proceed, the King not consulted with; then it seemeth that the Justices ought to stay for the Time, although there is not any Office found nor returned; for they are bound to give Credit to the King's Certificate, although that it be not true, &c. And in Attaint for the Plaintiff if he be in War in the King's Service, he may have a Writ directed to the Judges of the Common Pleas, to continue the Attaint, and to adjourn it to a certain Day, &c.

**E** And in Assise of *Novel diff.* if the King send his Writ to the Justices, reciting that the Defendant holdeth the Land of the King by Gift by his Charter for Life, commanding them that they do not proceed, the King not consulted: Now although the Tenant will not plead the same, it seemeth, that by that Writ the Justices ought to stay their Proceeding. So if the King recite in the Writ, the Tenant is in his Service in War beyond the Seas, or in *Scotland*, and that he holdeth for Life by the King's Charter of the King's Gift, commanding them not to proceed, the King not consulted, but to continue the Assise until a certain Day, there, it seemeth, they shall stay their Proceedings; for the Tenant cannot plead it, &c. For if the Escheator will say, that he hath seised the Lands into the King's Hands in an Assise brought by any Person, in that Case the Court shall surcease, *a fortiori*, by the King's Certificate; and divers such Writs are in the Register, &c.

**F** In Assise of Lands and Tenements, the Defendant pleads two or three Records in Bar to divers Parcels of the Land which are in the Treasury, and the Plaintiff denieth those Records, the Defendant ought for to remove those Records out of the Treasury by a *Certiorari* directed unto the Treasurer and Chamberlains of the Exchequer. And if he sue forth such a *Certiorari* to the Treasurer and Chamberlains, and they certify some of the Records in the Chancery to the King, and moreover certify, that there are other Rolls of the same Justices, of which they have not yet made full Search: Upon that certificate made by the Treasurer and Chamberlains in the Chancery, the King shall send his Writ unto the Justices, commanding them to continue that Assise, until the next Assises, that full Search may be made of those Records, so that the Tenant lose not his Lands for Failure of the Records; and such Writ is in the Register.

**G** And if a Man sue an Assise before the Justices of Assise, and the Tenant plead Bastardy in the Plaintiff, upon which a Writ is awarded to the Bishop to certify at the next Assises; and before the next Assises the King maketh new Justices, and the antient Justices do certify the Record of Assise unto the Treasury, the Plaintiff ought for to sue a *Certiorari* to remove the Record out of the Treasury into the Chancery by a

Writ to the Treasurer and Chamberlains, and upon that Record sent into the Chancery, he shall have a Writ of *Mittimus* sent unto the Justices reciting the Matter; and in the End of the Writ shall be this Clause:

[155.] *Nos ut partibus prædictis in eadem ass. fieri valeat quod justum est, record' & process. prædict' placiti, quæ coram nobis in Cancellaria nostra certis de causis venire fec', vobis mittimus sub pede sigilli nostri, mandantes ut his inspectis, necnon certif. prædict' Episcopi coram vobis super hoc, ut dicit', missa, ac recept' a Vic' Com' prædict' brevi originali ejusdem, quod penes ipsum remanet, sicut per inspection' eorund' record' & process. nobis constat, iterum in eadem ass. juxta tenorem brevis & placit' prædicti procedat' & eisdem partibus fieri fac' quod de jure & secundum legem & consuetudinem regni fuerit faciendum. Mandamus enim eidem Vic' quod dictum breve vobis liberet ad proximam Session' vestram in Com' prædict', Teste, &c.*

And if a Man sue an Affise before Justices against one Tenant, and A in the same Affise he name the Mayor and Commonalty of any Town as Disseisors, or Bailiffs of any Liberty as Disseisors, unto the End that they may not have Conusance of the Plea: Or that they shall not make the Panel; now he may sue a special Writ in the Nature of an *Audita querela* directed unto the Justices of Affise to enquire of the Matter, and to do Right unto the Parties, and if it be found, it shall abate the Affise. *Vi. Statute 9 H. 4. cap. 5. and see the like Statute made for the Sheriff, Anno 11 H. 6. cap. 2.*

But the Sheriff or Bailiff ought to shew the Matter unto the Court, and pray that it be enquired of, &c.

### *Writ de quod ei deforcean.*

THE Writ of *Quod ei deforcean* lieth, where Tenant in Tail, or Te- B  
nant in Dower or by the Curtesy, or for Term of Life, lose their Lands by (a) Default in a *Præcipe quod reddat* brought against them, then they have not any other Remedy, if they were summoned according to the Law, &c. but this Writ of *Quod ei deforcean*: And this Writ is given by the Statute of *Westm. 2. cap. 4.* and the Writ is mentioned in the Statute; and the Form is such:

*Rex Vic', &c. Præcipe A. quod, &c. redd' B. quæ fuit uxor C. unum C mesuagium cum pertin' in N. quod clamat esse rationabilem dotem suam; vel sic, Quod clamat esse de rationabili dote sua, & quod idem A. ei injuste deforc' ut dicit.*

(b) And if the Tenant in Frank-marriage bring the Writ, then the D Writ is,

*Quod*

(a) And yet the Writ or Count do not suppose any Recovery. 18 H. 6. 25. on whose Gift in the Count. 29 E. 3. 47. 30 losing by Default in a *Cessavit*. 8 R. 2. E. 3. 31. 6 H. 4. 2. Brief 931.



*Quod iuste, &c. reddat B. unum messuagium cum pertin' quod clamat esse ius & maritagium suum, & quod idem A. ei iniuste deforceat.*

And if he be Tenant in Tail, then the Writ is,

*Quod redd', &c. quod clamat tenere sibi & hæred' de corpore suo exeuntibus & præd' A. ei iniuste deforc'.*

And for Tenant for Life the Writ is,

*Quod clamat tenere ad terminum vitæ suæ. Vel, for Tenant by Curtesy, Quod clamat tenere per legem Angliæ.*

And the Register is, That this Writ for Tenant by the Curtesy, is by Equity of the Statute. But if the Tenant in Tail, or such other Tenant who hath a particular Estate, lose by Default where he is not summoned, &c. then he may have a Writ of Disceit, or a *Quod ei deforceat*, as he pleaseth.

**E** (a) If a Man lose by Default in an Action of Waste sued forth against him, he shall not have a *Quod ei deforceat*, for the Verdict which found the Waste.

And if a Man lose any Land by Default in a Writ of Right in a Court-Baron, he may remove that Record into the Common Pleas, and then have a *Quod ei deforceat* upon that Record; and so he shall have the *Quod ei deforceat*, although he do not remove the Record; but then it seemeth, that the *Quod ei deforceat* shall be sued in the Common Pleas, or in the Court-Baron, where he loseth the Land, as he pleaseth; *tamen Quære.*

**F** (b) And the *Quod ei deforceat* lieth against a Stranger to the Recovery; if a Man recover by Default, and maketh a Feoffment, the *Quod ei deforceat* shall be brought against the Feoffee.

And if a Woman lose by Default, and taketh Husband, she and her Husband shall have the *Quod ei deforceat*: But if Tenant in Tail loseth by Default and dieth, his Heir shall not have the *Quod ei deforceat*, but a *Formedon*; for that is his Writ of Right.

**G** Where a Woman hath Dower assigned her in the Chancery for the Nonage of the Heir, who is in Ward to the King; and afterwards the Heir at full Age sueth a *Scire facias* in the Chancery against the Wife to avoid that Endowment, and recovereth in that *Scire facias* by Default of the Wife: Now the Wife shall have a *Quod ei deforceat* in the Common Pleas upon that Recovery.

And so if a Man recover in the King's Bench any Land by Default, upon a *Scire facias* sued out of any Record which is there, the Tenant who lost by Default, shall have his *Quod ei deforceat*, and shall sue the same in the Common Pleas.

If

(a) So in Waste. 3 H. 6. 29. per Rolf fault. 2 E. 4. 11. 10 E. 4. 2. 10 H. 7. 9. 6  
contr. Co. Lit. 355. b. 1 And. 271. 3 Cro. 263. H. 4. 3.

[See 44 E. 3. 42. 2 H. 4. 21. 21 H. 6. 56.] (b) See 44 E. 3. 43. accordant, but it is doubted. 11 E. 3. and 16 E. 3. For by Pulton, if the Feoffor recovers in a Writ of Right, the Feoffee cannot tender Suit and deraigne, &c.  
Note; On a Recovery by Default in a Court Baron, a *Quod ei deforceat* lies in the King's Court; and therefore it is no Issue to say *Nul tiel Re ord ne Recovery*, for that it appears the Tenements were lost by De-

46 E. 3. 21.

If two Coparceners Tenants in Tail lose their Land by Default, they H shall join in a *Quod ei deforceat*, and yet the Default of the one is not the Default of the other. *M. 46 E. 3.*

And in a *Præcipe quod reddat*, if the Tenant for Life or in Tail ap- I pear, and after depart in Despite of the Court, he shall lose his Land, and yet he shall have a *Quod ei deforceat*, for that Recovery is by his Default, because he did not appear when he was demanded.

And if Tenant in Tail, or Tenant for Life, after the Mife joined in a Writ of Right depart in Despite of the Court, he loseth his Land, and there he shall not have a *Quod ei deforceat*, because Judgment final shall be given against him in that Case.

[156.]  
Old N. B.  
155. *contr.*  
10 E. 4. 2.  
*contr.*

(a) If the Husband and Wife be seised of Land in the Right of the A Wife, for the Life of the Wife, and they lose the Land in a *Præcipe quod reddat* by Default, yet they shall have a *Quod ei deforceat*, &c.

And if Tenant for Life loseth his Land in a *Cess.* brought against him by Default, yet he shall have a *Quod ei deforceat* by the Statute of *West.* 2. *H. 5 E. 3. & M. 9 E. 3.*

And if Tenant by Receipt upon the Default of Tenant for Life ap- B peareth, and is received, and pleadeth, and afterwards loseth by (b) Action tried: Yet the Tenant for Life shall have a *Quod ei deforceat*, for the Judgment is given against him by his Default.

And if the Tenant vouch, and the Vouchee will not appear, for which the Tenant loseth by Default of the Vouchee, it is to see whether the Tenant shall have a *Quod ei deforceat*; for he loseth the Land by the Default, although it be not his own Default, for the Statute is, *Et cum temporibus retroactis cum aliquis amisisset terram suam per defaultam, non habeat aliud recuperare quam per breve de recto*: And there it doth not say, *per defaultam suam*, but only by Default. But after in the Statute, it saith, *Provisum sit, quod de cætero non sit eorum defaulta eis ita prejudicialis*, &c. And by that it seemeth that the Tenant ought to make Default. But it seemeth that the Default of the Vouchee, is the Default of the Tenant, and so Default in both: *Quære* of that. But if the Tenant vouch, and the Vouchee appeareth and entreth into the Warranty, and afterwards loseth by Default; now if the Tenant lose by the Default of the Vouchee, he shall not have a *Quod ei deforceat*, because he shall have Judgment to recover over in Value against the Vouchee, by the Default of the Vouchee, so as he shall have Recompence. But if the Vouchee doth not appear, but maketh Default, then he shall 11 E. 4. 11. lose the Land by the Default of the Vouchee; but that is not the Default of the Tenant, and therefore *Quære* of that Case.

And if Husband and Wife lose by Default the Land of the Wife, C which she holdeth for Term of Life, if the Husband dieth, she shall not have a *Quod ei deforceat*, but a *Cui in vita*, for it is a Demise made by the Husband. And when he bringeth the *Quod ei deforceat*, he counteth that

(a) 4 E. 3. pl. 5. *contr.* 5 E. 3. pl. 16. 26.  
8 R. 2. Brief 931.

(b) See 33 E. 3. *Quod ei deforceat*. 17.  
8 H. 4. 5. 33 E. 3. *Assessory* 255. 10 H. 7.  
14. or 29. *Nat. B.* 154.



that he was seised of the Land in his Demesne, as of Freehold, or in his Demesne in Tail, without shewing of whose Lease or Gift he was seised; and he ought to alledge Esplees in himself, &c. and then the Defendant ought to deny the Right of the Demandant, &c. and shew, how that another Time he recovered the Land against the Demandant, by *Formedon*, or other Action, and shall say in the End of his Plea, *Quod ipse paratus est ad manutenendum jus & titulum suum prædict' per donum prædict'*, &c. unde petit judic', &c. And then the Demandant in the *Quod ei desorceat* shall traverse that Title, or may shew Matter to bar that Title, &c. but he shall not make Defence, and then plead in Bar, as he shall do in the *Formedon*, &c.

S. 48 E. 3. 8.  
acc. 2 E. 4. 13.  
11. ac.  
The Tenant  
in the *Quod*  
*ei desorceat*  
may plead  
any Bar as  
in other Ac-  
tions, and then  
the Demand-  
ant cannot  
vouch by  
the Statute  
of *West.* 2.  
cap. 4. But  
if he make  
his Bar by  
the first Re-  
covery, then  
he may.  
33 H. 6. 46.  
*quod nota.*

Writ de Attornato faciendo vel recipiendo.

**D**THE Writ de Attornato faciendo or recipiendo lieth, where a Man ought to do Suit at the County, or at the Hundred, or Wapentake, or other Court, and he would make Attorney for him to appear at the same Court, &c. And if he be in Doubt whether the Sheriff will admit such a Man for his Attorney which he maketh; then he who would make such Attorney, may sue that Writ directed unto the Sheriff, or Bailiff of the Hundred, commanding them to receive such a Man to be Attorney for him to appear, &c. and the Writ is such:

Vide ant. 251

*Rex Vic', &c. Quia per commune concil' regni nostri provis. est quod quilibet liber homo, qui sectam debet ad Com' Tithingum, Hundredum & Wapentagium libere possit facere Attorn' suum ad sect' suam pro eo faciend', Tibi præc' quod Attorn' quem S. loco suo Attorn' voluer' ad sect' pro eo faciend' ad Com' tuum prædict' Tithingum tuum de A. & B. Hundred' de C. & D. Wapentagium tuum de E. & F. loco ipsius S. sine difficultat' ad hoc recipias. Teste, &c.*

Otherwise unto the Bailiff of a Hundred, thus:

*Rex Ballivis suis de Hundredo sept' Hundred' de Cobham & Bray salut'. Quia per commun' concil' regni nostri, &c. qui sectam debet ad Hundred' libere possit, &c. vobis præcip' quod attorn', &c. ad præd' Hundred' sept' Hund' de Cobham & Bray loco ipsius S. &c.*

Otherwise unto the Bailiffs of another Lord.

*Rex Balliv' A. de I. salutem. Quia per Commun' concilium, &c. qui sectam debet ad Curiam dicti domini sui libere possit, &c. vobis præcipimus, &c. ad curiam dicti domini vestri de I. loco ipsius S. sine difficultat' ad hoc recipiat'. Teste, &c.*

And by that it appeareth, that the Tenant may make Attorney by his Letters Patent to do Suit at the Court of his Lord. And if the Tenant by his Letters Patent under his Seal make Attorney for him, to do Suit for him at the L. Court, or at the Hundred, and the Bailiffs will not admit of him, &c. then he shall have a Writ unto them in this Form:

*Rex Ballivis Decani & Capitul' Ecclesiæ beatæ Mariæ Linc' de C. vel Hund' de S. salut'. Quia, &c. (usque ibi) præcipimus, quod attorn' quem S.*  
per

*per literas suas patentes loco suo attornar' voluerit ad sectam pro eo faciend' ad Cur' dictorum Decani & Capit' de C. vel ad hundred' præd' Decani & Capitul' de C. loco ipsius S. sine difficultate ad hoc recipiatis hac vice de gratia nostra spec', &c.*

And for the Guardian there is another Writ thus:

*Rex, &c. Vobis mandamus, quod attornat', quem S. custos terræ & hæred' R. loco suo attornar' voluerit ad sectam pro eo nomine dicti hæred' faciendum, &c. loci ipsius custodis sine difficultate ad hoc, &c.*

Or thus to the Bailiffs of the King:

[157.] *Rex Ballivis suis honoris Peverel in Com' N. salutem. Quia, &c. vobis præcipimus, quod attorn' quem S. loco suo attorn' voluerit ad sectam pro eo faciend' ad Curiam nostram honoris prædict' in Com' prædict' loco ipsius S. recipiatis, &c.*

And if the Lord of any Tenant be in Ward to the King for the Nonage of his Heir, because he holdeth other Lands of him *in Capite*, &c. and his other Lords will distrain for Suit during the Time the Lands are in the King's Hand, or in the Hands of his Committees, then the King or his Committees shall have a special Writ unto the Bailiffs of the other Lords, that they do not distrain the Heir, nor in the Lands, &c. during the Time that he is in the King's Hands, or in the Hands of his Committee, and if he have distrained them, that they deliver back the Distress again; and that Writ appeareth in the Register.

And if the King hath any Lands or Tenements in Ward, during the Nonage of an Infant, and the King in Chancery assigns Dower unto the Wife of the Husband who was Father to the Ward, of Lands holden of other Lordships; now if the other Lords will distrain the Tenant in Dower for Suit at their Court during the Time the Lands are in the King's Hands, the Wife shall have a Writ unto the Bailiffs of the other Lords, commanding them that they do not distrain her. And recite in the Writ all the special Matter; and if they have taken any Distress, that they deliver it back again.

If a Man make an Attorney to do Suit for him at the County, or Hundred, or other Court, and the Bailiffs will not admit him for his Attorney; or if the Bailiffs do admit him for Attorney, and afterwards discharge him after the Year; supposing that he ought not to continue Attorney for the Party above one Year; or for any other unreasonable Cause they discharge him to be Attorney for the Party; then the Party may have a special Writ directed unto the Bailiffs, &c. commanding them that they receive him for his Attorney; and thereupon he may have an *Alias*, and a *Pluries*, and an Attachment against them returnable in the Common Pleas, or in the King's Bench, if they will not admit him for his Attorney, or return Cause upon the *Pluries*, which shall be allowable, wherefore they do not admit him; and the Form of the Writ is such:

*Rex Ballivis A. de Hundredo de B. salutem. Ex parte C. nobis est ostensum, quod cum ipse per breve nostrum attornatum suum ad sectam pro eo faciend' ad Hundredum prædict' domini vestri de B. in eodem Hundredo coram vobis fecisset, & idem attornatus per idem breve ad hoc admissus, sectam illam*



*illam hætenus fecerit, sicut moris est in Regno nostro, vos præsumptioni vestre voluntarie innuentes, & causam prætendentes, quod potestas hujusmodi Attornati ultra Annum durare non debet, ipsum C. prædict' sectam per Attornatum suum prædict' facere non permittitis, in ipsius C. damnum non modicum & gravamen, de quo miramur quamplurimum, & movemur. Et quia Virtus brevium nostrorum de hujusmodi attornat' faciendo terminum non capit, nec terminus limitatur durantibus person' quæ ad hoc requiruntur; Nos ne idem C. vel alii indebite vexentur vel graventur occasione prædicta, remedium super hoc adhibere volentes, Vobis præcipimus, firmiter injungentes, quod ab hujusmodi voluntariis & indebitis vexationibus & gravaminibus eidem C. vel aliis ea occasione de cætero inferendis desistentes, ipsum C. sectam præd' per Attornatum suum præd' sine difficultate qualibet facere permittatis, juxta tenorem prioris brevis nostri vobis inde directi. Et ita vos habeatis in hac parte, quod prædict' C. occasione præd' non ponatur in defalta, nec in aliquo sit perdens, & quod non oporteat nos super hoc amplius sollicitari, per quod manum ad hoc aliter apponere debeamus. Teste, &c.*

**C** Note, That the Party may make Attorney by the King's Writ directed unto the Bailiffs, commanding them for to receive such Person for his Attorney. Or he may have a Writ out of the Chancery directed unto the Bailiffs, or Sheriff, to receive any such Person for his Attorney, that he will present unto the said Bailiffs or Sheriffs to be his Attorney to do his Suit; or he may make Attorney by Letters Patent directed unto the Bailiffs without suing forth any such Writ.

And if a Man sue forth a Writ directed unto the Bailiffs to admit one for Attorney to do his Suit for him, and the Bailiffs refuse to admit him; now the Party who sued forth the Writ shall have an Attachment against the Bailiffs for that Refusal, without suing forth an *Alias* or a *Pluries* directed unto them.

And so the same Law is, if the Tenant by his Letters Patent maketh one Attorney to do his Suit for him, and the Sheriff or Bailiff of the Court doth refuse to admit him for his Attorney: Upon that Refusal, the Party shall have an Attachment against the Bailiff, &c. although he hath not sued forth any Writ directed to him before, because they do against the Statute, which requireth, that they admit him for Attorney whom the Tenant will make to be his Attorney.

**D** And he shall have the like Writ against the Bailiffs of any other Lord, who refuse to admit an Attorney to do Suit for the Tenant in any Court-Baron, and that Writ appeareth in the Register.

*Writ pro Exoneratione Sectæ ad Curiam Com' vel Baron.*

[158.]

**A** THIS Writ lieth where the Tenant holdeth his Land to do Suit at the County-Court, Hundred, or other Court-Baron, or Wapentake or Leet, and he who ought to do the Suit is in Ward unto the King, or his Committee, and the Lord of whom he holdeth by such Service, will distrain him to do his Suit at his Court during the Time he

is in Ward unto the King or his Committee; his Guardian shall sue this Writ unto the Sheriff, or Bailiffs of the Court, that they do not distrain him, &c. to do Suit during the Time he is in Ward to the King or his Committee; and the Form of the Writ is such:

*Rex Ballivis A. de I. salutem. Cum secundum legem, &c. non debeamus sectam ad Curiam alicujus facere occasione terrarum & tenementorum quorumcunque in manu nostra, vel in custodia nostra existent, & illi quibus hujusmodi custodias commiserimus custodias illas, durante custodia illa, adeo libere & ab omni secta quiete tenere debeant, ac si nos eas in manu nostra teneremus; Vobis præcipimus, quod ratione terræ & tenementorum I. defuncti, qui de nobis tenuit in capite, & quæ sunt in custodia ejusdem R. ex concessione nostra non distringatis, vel distring' faciatis, ad faciendum sectam ad Curiam præd' domini vestri de I. dur' custodia antedicta, & distr. si quam, &c.*

And the like Writ shall be for Tenant in Dower, where she is endow-  
ed in the Chancery of Lands which are in Ward to the King, which  
Lands are holden of other Lords; now if the other Lords will distrain  
the Tenant in Dower, to do Suit for those Lands which he holdeth in  
Dower, she shall have a Writ to discharge her, which is such: B

*Rex Ballivis A. de B. salutem. Cum secundum legem, &c. (ut supra usque ibi) existentes, & mulieres terras vel tenementa tenentes in dotem de hujusmodi custodiis, ea adeo libere & ab omni secta quiet' tenere debeant dur' custodiis illis, ac si præd' terras & tenementa in manu nostra teneremus; Vobis præcipimus, quod M. & R. uxor' ejus, occasione terrarum & tenementorum quæ fuer' H. in F. quæ de nobis tenuit in capite, & quæ idem R. & M. tenent in dotem ipsius R. de dono prædict' H. quondam viri sui, & de hæreditate filii & hæred A. infra ætatem & in custodia nostra existent, non distringatis ad faciend' sectam ad Cur' præd' domini vestr' durante custodia nostra supradicta, & distr', &c.*

And if the Heir be in Ward of the King and also his Lands, and afterwards the Tenants Paravail who hold of the Heir are distrained by other Lords, of whom the Heir holds his Lands, to do Suit unto the Lord's Court, those Tenants shall have a Writ directed unto the Lord's Bailiff, to discharge them of the Suit; and the Writ is such:

*Rex Vic' Nott' salutem. Cum secundum legem & consuetudinem regni nostri, nullus qui tenet de hæred' infra ætatem & in custodia nostra existent' teneatur ad sectam faciendam ad com' Hundred' Wapentag' seu alius Cur' pro terris & tenementis ipsorum hæred' in manu nostra existent' durant' custod' supradict'; Tibi præcipimus, quod Abbat' de Derley tenent' quorundam terrarum & tenementorum Rogeri filii & hæred' Roger' Bellers defuncti in Chilwell, qui de Domino Rich' nuper Reg' Angliæ tenuit in Capite, occasione terrarum & tenementorum ejusdem hæred' in eadem Vill' in manu nostra ratione minoris ætat' suæ existent, non distring' vel distring' facias, ad faciend' sectam ad Wapentagium de B. durante custodia supradicta.*

And if the Heir and his Lands be in the King's Ward, for Lands  
holden of the King in Capite, and afterwards the other Lords, of whom  
the Heir holdeth Parcel of his Lands, will distrain for any Service or  
Rent to them due, then the King or his Committee may sue a Writ for  
them to surcease from such Distress, and the Writ is such

*Rex*



Rex Ballivis, &c. Cum hæred' infra ætatem & in custodia nostra existentes (a) servitia aliqua durantibus custod' illis facere minime debeant seu teneantur secundum legem & consuetudinem regni nostri; Vobis præcipimus, quod distriction' quam Abbati de W. tenenti hæred' Willielmi de W. qui de nobis tenuit in Capite infra ætatem & in custodia nostra existent' pro homag' fidelitat' ac aliis servitiis prædict' hæred' præf. Dom' faciend' fac' supersedeatis omnino durante custodia antedicta & district' si quam, &c.

And also the Tenant in Dower shall have such Writ if the Bailiff of other Lords will distrain her, for the Relief of the Heir or other Services, during the Time that the Heir's Lands are in the King's Custody, or in the Custody of his Committee. And it seemeth, That he may sue this Writ directed unto the Lord himself, as well as to the Bailiffs, or unto them both.

**D** Note, That if a Man holdeth of another to do Suit to his Mill, &c. if he do not the Suit, he shall have a *Seffa ad Molendum* against him, and by the same Reason, if a Man hold of another Lord to do Suit at his Court in the Mannor of D. if he do not the Suit, the Lord may have a Writ of *Seffa ad Curiam suam faciend'* as well as the other Writ. But yet there is no such Writ in the Register, because he may distrain (b) for that Suit, and shall not have any other Profit but only Appearance in his Court. But in the other Case of *Seffa ad Molendum*, he shall have other Profits by the Suit, the Toll of the Grain he shall grind there, and for that Profit it seemeth the Action of *Seffa ad Molendum* was given, and for the Suit of the Court, but only a Distress; *tamen Quere.*

[159.]

**A** If the King have Lands by Forfeiture or Escheat, and leaseth them for Life, at Will, or in Tail, and if the Lord of (c) whom the Lands are holden will distrain the King's Committee or Lessee for Suit or other Services, he shall have a special Writ unto the Lord's Bailiff to surcease, &c.

Vi. 31 H. 8.  
25. 33 H. 8.  
Stamford  
38. H.  
3 E. 3. 10.  
45 E. 3. 6.

And if Lands descend unto divers Coparceners, for which one Suit shall be done at the Lord's Court, if Parcel of those Lands come into the King's Hands, then he shall have a special Writ to discharge him of the Suit (d) for the Time they shall be in the King's Hands; which shall be such:

B b b 2

Rex

(a) Note; All the Services are gone during the King's Seisin; for the meise Seigniories are suspended by the King's Seisin, who is Lord paramount. *Bract. lib. 1. fol. 87.* but it seems that the Rent (remains) although the Distress be suspended; but the Lords must sue to the King by Petition, for the Surplusage above that which they are charged to the King, to be recovered. 24 E. 3. 24. 39 Aff. 5. 13 H. 7. 15. per *Keb.* Where he may distrain at full Age of the Infant, and after Livery sued for all the Arrears, above that for which they were charged to the King. See *Stamf. Prærog.* 9. 39 E. 3. Relief 1. 26 H. 8. 8.

(b) See 6 H. 3. *Voucher* 273. *Seffa ad Hundredum* brought, *qua facere debet & solet.*

(c) And note; If the King has a Tenancy by Forfeiture or Purchase, if he does by Covin alien them to hold of himself, the Lord may sue by Petition, and have a *Scire facias* against the Patentee to repeal the Patent, and to reseise the Land, and then it shall be granted, *Tenend' de Capitali Domino.* 20 Aff. 124. 46 E. 3. *Petition* 19. 17 E. 3. 59. but this is intended of an Alienation in Fee. 3 E. 3. 10.

(d) *Quere.* If A. holds Lands charged with Suit to the Hundred by Prescription, and enfeoffs the King of Parcel, if all the Suit is gone.

Rex Vic', &c. salutem. Cum de communi concilio regni nostri, provis. sit, quod si hæred' aliqua, de qua unica secta debeat' ad plur' hæred', &c. vel ad alios per vendition', &c. devolvatur: Unica tum, &c. fieri consuevit, ac quædam hæreditas, quæ fuit H. de B. de Baronia de B. de qua quidem Baronia unica secta tantum ad Com' tuum prædict' debet' ad dilect' & fidel' nostrum W. de H. & I. fil' & hæred' R. de S. infra ætat' & in custod' dilect' & fidel' nostri R. de N. ex commissione nostra existen' per venditionem sit devoluta, ut accepimus: Nosque secundum legem & cons. &c. non debeamus sectam aliquam facer' occasione terr' & tenement' in manu nostra, & in custod' nostra exist' & illi quibus hujusmodi cust' commiserim' illas adeo libere & ab omni secta quiete tenere debeant, sicut nos ea in manu nostra teneremus, Tibi præc' quod si ita est, tunc non distr' præd' W. de H. ad fac' sect' ad com' tuum præd' pro terr' & tenement' de Baronia præd' dur' custod' dicti hæredis supradict', &c.

And if the Wife be Tenant in Dower of any Land, she shall not be distrained to do Suit for that Land which she holdeth in Dower, if the Heir have sufficient Land in the same County to be distrained for the same. And if she be distrained, then she shall have such Writ:

Rex Balliv' hundred' de N. salutem, &c. Cum secundum legem & consue- B tud' regni nostri mulieres tenentes in dotem, pro terris & tenementis suis, quas tenent in dotem, sect' ad hundr' vel cur' alicujus facere non debeant; Vobis præcipimus, quod A. quæ fuit uxor B. ad faciend' sectam ad hundr' prædict' pro terris & tenementis quæ tenet in dotem & libero tenemento quod fuit præd' quond' viri sui, contra legem & consuetudinem regni nostri non distringatis, dummod' hæred' prædict' B. alias terr' & tenementa in balliva tua habet, per quæ distringi valeat ad sectam illam pro præd' dote faciend', & district' si quam fecer', &c. eam sine dilatione liberari facias, &c.

Plowd. Com.  
240. ac.  
45 E. 3. 23.  
Dyer 240. b.  
St. Marl. c. 9.

And if Lands descend to many Coparceners, whereof one Suit ought C to be done for the whole Land; now if the Land be holden of the King, then all the Coparceners ought to do the Suit as well after Partition as before: But if the Land be holden of another Lord, then that Coparcener or his Feoffee who hath the Part of the eldest Sister, shall only do the Suit; and if the Lord will distrain the other Coparceners, then they shall have a Writ against him directed to him or his Bailiffs to discharge them of that Suit, and Distress taken, &c. and the Writ shall be such:

Rex C. vel ball' C. salut', &c. Cum de communi, &c. provisum sit, qd' si hæreditas aliqua, de qua unica secta tant' debeat', ad plur' hæred' participes ejusd' hæred' vel al' per vend' seu alio modo devolvatur, unica tant' fiat secta pro hæreditate illa, sicut prius fieri consuevit, ac quædam hæred' quæ fuit A. in N. pro qua unica sect' tum debet ad cur' tuam de I. vel ad cur' prædict' domini vestri de I. ad A. B. & C. cohæred' & participes hæred' prædict' sit devoluta, ut accepimus; Tibi vel vobis præcipimus, quod non distringas vel distringatis prædict' A. B. & C. ad diversas sect' pro portionibus suis hæred' præd' separatim faciend' ad curiam tuam de I. vel ad cur' præd' domini vestri de I. contra form' provis. prædict' & districtionem si quam, &c.

And



**D** And if the Tenant enfeoff divers Persons of Lands, for which one Suit ought to be done, if one of the Feoffees do the Suit, &c. if the other Feoffees are distrained to do Suit for that Land, they shall have such Writ, which Writ is in the Register, and that Writ is given by the Statute of *Marlbridge*, cap. 9. (a) Perk. 130. Post. 162. D.

And so if the Heirs or Feoffees shall do the Suit, at the County, Hundred, or Wapentake; if one do the Suit, all of them are discharged; and if they be distrained, they shall have that Writ. 24 E. 3. 34. Post. ibid.

And so if one Coparcener maketh a Feoffment of his Part, or a Man be Tenant by the Curtesy of one Part of the Land, (b) yet one Suit shall be only done by one Coparcener by him who hath the eldest Part. And if they be joint Feoffees, then by one of them, as they can agree amongst themselves, &c. And if he sue such Writ, and he be distrained, then he shall have an Attachment against the Lord, or the Bailiffs to whom the first was directed, to answer that Contempt, in which Writ he shall recover his Damages, &c.

**E** But if there be two Coparceners of Land, for which one Suit ought to be done, and the eldest Sister will not do the Suit at the Lord's Court; then the Lord may distrain the other (c) Coparcener, as well as the eldest Coparcener for that Suit, and if the Coparceners be distrained, then they shall have a Writ against the eldest Sister to compel her to do the Suit; and the Writ shall be such:

*Rex Vic', &c. Si B. & C. fecerint, &c. tunc sum', &c. A. quod sit, &c. ostens. quare cum de communi, &c. quod si hæred' aliqua, &c. (usque ibi) consuevit, & quod illa quæ habet enitiam partem, &c. ac quædam hæred', &c. (usque ibi) sit devoluta, ut accepimus, & prædict' A. habet partem hæred' illius: Et præfat' B. & C. parat' sunt contribuer' pro portionibus suis ad sectam illam faciend'. Idem A. sectam illam pro se & præfat' B. & C. cur' præd' facere contradicit, ad grave damnum ipsarum B. & C. & contra form' provision' præd' ut dic', & habeas ibi sum', &c.* [160.]

**A** (d) And if a Man have Lands in divers Places in the County, and hath several Leets, &c. or Hundreds, and he is constrained to come unto the 18 H. 6. 13. Marl. c. 10.

(a) See Register 176. accordant. 11 E. 3. Avowry 10. by Stone and Thirn. contr. Parn. For Suit to the Hundred is not only in Respect of the Resiance, as Suit to a Leet, &c. is. Note Register 175. cum secundum legem & consuetud', &c. and ibid. 176. cum de communi concilio Regni, &c.

(b) See accordant 24 E. 3. 73. yet contr. of Jointenants. Post. 162. D. See 2 E. 2. Avowry 179. If Lands descend to two Parceners, and the Elder does Homage, this discharges both; and yet if the Elder alien, the Lord may distrain on the Younger for the Homage.

(c) And shall make Avowry on her only, and not on both after a Partition by Feoffment, &c. 24 E. 3. 73. See 2 E. 2. Avowry 184. and see the Case. 24 E. 3. 34,

73. where the Eldest aliens her Part to one, and the Younger her Part to another, and the Avowry made on the Alienee of the Elder only for Suit, &c. and so it may be on the Alienee of the Younger for other Suit; yet Suit made by one discharges both: And note per Cur. He cannot avow on both in Fee after such Severance.

(d) Note; A Thing presentable in the Leet, shall not be redressed in the Torn, without a special Prescription, because they are equal Jurisdictions, though at first the whole Jurisdiction was in the Torn; and is superior still, where the Lord of the Leet is peccant. 21 E. 3. 314. or where the Lord of the Leet does not remedy an Abuse. 20 E. 3. 85. 29 E. 3. 21. or in the Eyre, or by Commission. contr. 41 E. 3. per Belkn.

the Leet or the Sheriff's Torn, where he is not dwelling or conversant, but is dwelling within the Precinct of any other Leet or Hundred, &c. then he shall have a Writ unto the Sheriff, for discharging him from coming to the Sheriff's Torn, or Hundred, or Leet, or other Place, than in the Leet or Precinct of the Hundred where he dwelleth; and the Writ is such:

*Rex Vic' Wigorn' salutem. Cum de communi concilio regni nostri provis. sit quod si qui in diversis hundred' habeant tenementa non habeant necesse venire ad turnum vic' nisi in ball' ubi fuerint conversantes: Tibi præcipimus, quod non distring' S. ad veniend' ad turnum tuum in hundredo nostro de I. contra form' provis. præd', &c.*

And look the Statute of *Marlebridge*, cap. 10. by which it appeareth, that the Sheriff ought for to hold his Torn as he hath used in the Time of *Richard* the first, and *John*, King's of *England*.

And by the Writs it seemeth, That he shall hold his Torns in every Hundred, &c. And if the Sheriff distrain against that Statute any Man, then he may sue that Writ upon the Statute, &c. and if he do distrain him after; then he shall have Attachment against the Sheriff, &c. and the Writ is such:

*Rex Coronatoribus suis in Com' Lincoln' salut'. Si A. fecerit, &c. tunc ponite, &c. B. Vic' nostrum Com' præd' quod sit, &c. ostens. quare cum de communi concilio, &c. (usque ibi) conversant', idem B. vel idem Vic' distrinxit præf. A. ad veniend' ad turn' ipsius Vic' de hundred' nostro de I. contra form' provis. prædict' & contra form' mandati nostri prius ei inde direct' ut dic' & habeatis, &c. Et averia ipsius A. ea occasione capta interim deliberari faciat. Teste, &c.*

And if a Man have Lands within the Precinct of several Leets, or in **B** one County, and he dwelleth within the Precinct of one of them, and he is distrained to come unto another Leet (a) where he dwelleth not, then he shall have such Writ unto the Sheriff, or Bailiffs of the Court, &c. that they do not distrain him to come to that Leet, within the Precinct whereof he dwelleth not; and the Writ is such:

*Rex ball' suis honoris de C. in Com' Linc'; vel, ball' A. de B. in Com', &c. salut'. Cum de communi concil', &c. si qui in divers. bund', &c. non habeant necesse*

*Belkn.* 10 H. 4. 4. an Enquiry in a *Quo Warranto*; viz. He who claimed a Leet within a Town, whether four Men and the Baili were resiant to the Leet or the Torn, or the Hundred where the Town is. See 18 H. 6. 12, 13. The Inhabitants of a Leet shall be compelled to come to a Torn. But *per Cur.* one shall not be compelled to come to two Leets, although one be greater and the other less; for *per Cur.* the Sheriff's Torn is no Leet, for Assize of Bread and Beer shall be presented in a Leet, but not in a Torn; and those Things which are omitted in a Leet, shall be presented in the Torn; and see there that the same Land may be within the Precincts

of two Leets; and agree that A. may have a Leet at one Time of the Year, and B. at another Time of the Year, for both make but one Leet.

(a) Lands may be held by Suit to a Hundred by Prescription or special Grant, and he may be distrained, and also amerced for it, as it seems. And note; if Land held by Suit at the Hundred, come to several Hands, several Suits shall be made, for it is not within the Statute, *per Parning*, which *Stone* denied: Also by *Parning*; If both Parcels return again to one Hand; yet two Suits are due, and he shall serve twice and be amerced twice. But *Shard* held the contrary. 11 E. 3. *Avowry* 101.



*neceſſe venire ad viſum franc' pleg', niſi in ball' ubi fuer' converſant'; Vobis præc' quod non diſtingat' ad veniend' ad viſum franciplegii in cur' veſtra, vel in cur' domini veſtri honor' prædict' in Com' prædict' cont' form', &c. & diſtriction', ſi quam, &c.*

And it appeareth that if the Party be diſtrained, after that he hath ſued the Writ directed unto the Sheriff, or Bailiffs, that they do not diſtrain him, that he ſhall have an Attachment againſt them: But it ſeems reaſonable, that firſt he have an Attachment againſt the Sheriff, or againſt the Bailiffs, who diſtrained him to come to the Leet in the Hundred where he is not dwelling, if he be dwelling within the Precinct of another Leet, becauſe the Statute of *Marlebridge* is a Prohibition in it ſelf, and he who doth contrary to the Statute doth Wrong unto the Party, upon which he may have an Attachment, without ſuing forth any Writ. Br. Leet 39.  
Britton 41.

**C** Note, That Men or Women who have entred into Religion, ought not to come unto the Sheriff's Torn, or unto the Leet of any other without great Cauſe; and if they be diſtrained for to come, they may have a Writ out of the Chancery to diſcharge them, which ſhall be ſuch:

*Rex Vic', &c. Cum de communi concilio, &c. quod viri religioſi non habeant neceſſe venire ad turnum vic', &c. Vel ſic; ad viſum franciplegii, niſi eorum præſentia ob aliquam cauſam ſpecialiter exigatur; Tibi præcipimus, quod non diſting' Abbat' de I. ad veniend' ad turnum tuum: Vel ſic; ad viſum franciplegii, in hundred' veſtro de F. contra form' proviſionis prædict', & diſtrictionem, &c.*

And the Abbot ſhall have ſuch a Writ unto the Bailiffs of another Lord, that they do not diſtrain him to come to his Leet.

And by the Common Law, Parſons of Churches ſhall not be compelled or diſtrained to come to the King's Leets, or to the Leets of other Lords of the Lands annexed to their Churches, and if they be diſtrained ſo to do, they ſhall have ſuch Writ:

*Rex Vic', &c. Cum ſecundum conſuetudinem regni noſtri perſonæ Eccleſiaſt' ratione terr' & tenementor' ſuor' Eccleſ. ſuis annex' venire non debeant ad viſum francipleg' in cur' noſtra vel aliorum quorumcunque; Tibi præcip' quod C. perſonam Eccleſ. de I. ratione terr' & tenement' ſuorum Eccleſ. prædict' annexorum, ad veniend' ad viſum francipleg' in hundred' de N. non diſtingas contra conſuet' præd' & diſtrictionem, &c.*

And Clerks who are not Parſons, nor have Benefices, ſhall not be diſtrained or compelled to come to Torns or Leets, but they ſhall have a Writ to diſcharge them, thus:

*Rex Vic', &c. Cum perſonæ Eccleſiaſt' non habeant neceſſe venir' ad turn' vic' vel ad viſum franc' pleg' niſi eorum præſent' ob aliquam cauſam ſpecialiter exigatur juxta form' proviſionis de communi concilio regni noſtri in conſimili caſu pro viris religioſ. factæ; idèo tibi præcipim' quod non diſting' S. perſonam Eccleſ. de N. vel capellanum, ad veniend' ad turn' tuum vel ad viſum franc' pleg' noſtri in hundred' de I. cont' form' proviſ. prædict', & diſtrict', &c.* [161.]

And

Dr. Lect 34. And Women are not compellable nor distrainable to come unto the Sheriff's Torn, nor to Leets; and if they be distrained, they may sue such a Writ as a Priest may sue, and thereupon an *Alias*, a *Pluries*, and Attachment, &c. And because that Women are not sworn in Leets as Men who are of the Age of twelve Years or more are; it is said, that when a Woman is outlawed, that she is *Wayve*, and not outlawed; for she was never sworn to the Law, &c. But a Man is said outlawed, because he was sworn to the Law; and now for his Contumacy he is put from the Law, and said outlawed, as it were *extra legem positus*; and a Woman is not so, for she was never sworn to the Law.

Wherefore a Man is said outlawed.

And by the Rule of the Register, two Women may sue that Writ unto the Sheriffs or Bailiffs of the Leet, that they do not distrain them to come to the Torn or Leet, &c.

See before 14 good Cases for their Privileges.

And if the Sheriff will distrain the Tenants in ancient Demesne, to come unto the Leet or Sheriff's Torn, they may have one Writ for them all directed unto the Sheriff, commanding him that he do not distrain them, &c. to do any Suit at the Leet or Torn; and that Writ shall be sued in all their Names if they will, as a *Monstraverunt* shall be sued: Or any of them may sue the Writ in his own Name, if he be distrained to do such Suit; and the Writ is such:

*Rex Vic', &c. Monstraverunt nobis homines de manerio de D. quod est de antiquo Dominico Coronæ Angliæ quod cum ipsi ad Torn' Vic' seu ad visum franc' pleg' extra libertatem maner' prædict' venire non debeant, nisi ipsi vel eorum antecessor' homines & tenentes de eodem manerio venir' consueverunt a temporibus retroactis; tu nihilominus homines nostros prædict' ad veniend' ad Torn' in K. vel ad visum franc' pleg' in hundr' nostro de K. cont' consuet' in eodem manerio hætenus usitatam gravit' distringis & ipsos multipliciter ea occasione inquietas minus juste in ipsorum homin' & tenentium præjudicium manifestum & gravamen. Et quia præd' hominibus & tenentibus nolumus injuriari, Tibi præcipimus, quod si ita est, tunc ab hujusm' distractionibus iis ex causa prædict' de cætero inferend' penit' desistas, & ipsos consuetudinibus suis, quibus hætenus rationabiliter usi sunt, absque impedimento seu calumnia uti permittas & gauder' ne querela ad nos veniat iterata. Tesse, &c.*

Mag. ch. p. 81.

And if the Sheriff will distrain a Man to do Suit to the Hundred or Wapentake twice in the Year, to do Things appertaining to that Leet, then he shall have a Writ upon the Statute of *Magna Charta* directed to the Sheriff, which shall be thus:

*Rex Ball' suis de Wapentak' de R. sal'. Cum in Magna Charta de libertatibus Ang' contineat' quod nullus Vic' vel Ball' suus fac' turn' suum per hundr' nisi bis in anno & non nisi in loco debito & consueto, viz. semel post Pasch' & iterum post festum S. Michael', ac jam ex querel' hominum & tenentium Abbat' de C. accepimus, quod vos ipsos homines & tenent' in hac parti' prægravat' machinantes, ipsos ad veniend' ad quodlibet Wapentag' nostrum prædict' ad presentand' ibidem ea que ad visum franc' pleg' pertinent jam de novo gravit' distringitis, in ipsorum hominum & tenentium grave damnum & præjudicium manifestum, & contra tenorem Magnæ Chartæ præd'; Nos eand' chart' in omnibus inviolabiliter observari volent' vobis præcipimus, quod dictos homines*



homines & tenentes ad veniend' coram vobis ad Wapentagium prædict' ad præsentand' ea quæ ad visum franc' pleg' pertinent contra tenorem Chartæ præd' nullatenus distring, & districtionem, si quam, &c.

And by that it appeareth, that he shall not distrain to come to the Hundred to present a Thing appertaining to the Leet but twice in the Year; but to do Suit at the Hundred, to do that which appertaineth (a) to the Hundred-Court, he may distrain them several Times to do the Suit, and they shall have no Remedy, because Suit at the Hundred is from three Weeks to three Weeks.

Writ de Quarentina habenda.

**E** THE Writ of *Quarentina habenda* lieth, where a Man dieth seised of any Messuage and Lands, &c. and immediately after the Death of the Husband, the Heir or he who ought to have the Lands after his Death, will put the Wife out of the Messuage, &c. Then the Wife shall have this Writ; for by the Statute of *Magna Charta*, cap. 7. the Wife shall remain in the capital Messuage after the Death of her Husband by forty Days, if it be not a Castle; and that Writ is *Vicontiel*, and shall be directed unto the Sheriff, and he shall hold Plea thereof; and the Writ is such:

*Rex Vic', &c. vel ballivis suis S. salutem. Ex querel' B. quæ fuit uxor D. accepimus, quod cum in Magna Charta de libertatibus Angl' contineatur, quod viduæ maneant in capitali Messuag' maritorum suorum per quadragint' dies post obitum maritorum suorum prædict', nisi messuagia illa castra sint; infra quod tempus dotes suæ assignentur eisdem, & quod interim habeant rationabilia estoveria de bonis eorund'; I. de C. ipsam B. statim post mortem præd' viri sui de capitali Messu' quod fuit ejusdem D. in H. licet castrum non sit, nec dos ei assign' fuer', violenter ejecit & ipsam estoverium suum de bonis eorund' com' percipere non permitt', in ipsius B. damnum non modic' & gravamen, & cont' tenor' Chartæ prædict'. Et quia præf. B. injuriari nolumus in hac parte, vobis mandamus, quod vocatis coram vobis partib' præd' & auditis hinc inde eorum rationibus, eidem B. plenam & celerem justitiam inde fieri faciatis juxta tenorem Chart' præd' ne pro defectu justitiæ querela ad nos venerit iterata. Teste, &c.*

[162.]  
Quare, If an Infant may keep the Possession during the Time of Quarentine, by Force of the Statute of 8 H. 6. 4 & 5 Ma. Dyer 161.

**A** And upon that Writ the Sheriff shall award Process against the Party to come, and answer the same, and shall not stay until the County-Court be holden; for this Writ is a Commission unto him, and upon the

C c c

same

Nota by Newton. The Woman shall not have Meat

and Drink; for the Statute doth not extend to it. But *Fitz-herbert* in abridging the Case queries, if she may not kill any Things for her Provision, if there be not any Provision in the House.

(a) Note; A Hundred is no more than a Court-Baron, and the Suitors there are Judges. 6 E. 4. 3. per Custom; and yet for Suit to a Hundred-Court, one cannot distrain except by Prescription, and in the Lands charged with the Suit. 5 E. 3. 52.

11 E. 3. *Avowry* 101. but he may be amerced by the Suitors for Default of Suit, and for such Amercements their Cattle may be distrained, &c. 2 H. 4. 24. 11 H. 4. 89. See 11 E. 3. *Avowry* 101. per *Parring*.

same he shall immediately make Process against the Party for to answer, &c. within two or three Days, according to his Discretion, and thereupon to proceed as Justices shall do upon a Commission of Oyer and Terminer, &c.

### Writ of Contribution.

**T**HE Writ of Contribution lieth where there are Tenants in Common, or who jointly hold a Mill *pro indiviso*, and take the Profits equally, and the Mill falleth into Decay, and one of them will not repair the Mill; now the other shall have a Writ to compel him for to be contributory to the Reparations; and the Writ is such:

*Rex Vic', &c. Si A. fecerit, &c. tunc summ', &c. B. & C. quod sint apud W. &c. ostens. quare cum iidem A. B. & C. quoddam molendinum in N. indiviso teneant, & ipsi exitus inde provenient' pro equali portione percipiant, & ad reparationem & sustentat' ejusdem molendini teneantur, ac iidem B. & C. licet proportionem de exit' illis ips. contingen' percipiant, reparationi & sustentationi prædict' molendini contribuere contradicunt, in ipsius A. damnum non modicum, & gravam' ut dicit, & habeas ibi sum' & hoc breve.*

And if there be three or four Coparceners of Lands, and the eldest Sister do the Suit to the Lord of whom the Lands are holden for all the Coparceners, and the others will not allow her for her Charges and Losses according to the Rate for the same Suit; that Coparcener who did the Suit may have this Writ of Contribution; and the Writ is such:

*Rex Vic', &c. Si B. fecerit, &c. tunc summ' A. & I. uxorem ejus, & R. & F. uxorem ejus quod sint coram Justic', &c. ostens. quare cum de Com' concilio, &c. quod si hæreditas aliqua, &c. (ut supra usque ibi,) & ille qui habet enitiam partem hæreditatis illius, sectam illam faciat pro se & participibus suis ejusdem hæreditatis, & quod iidem participes contribuant ad sect' illam faciend', ac quædam hæred' quæ fuit C. in R. pro qua unica secta ad hundred' I. de N. tantum debetur, ad ipsum B. & præd' A. I. R. & F. particip' hæreditatis prædict' sit devoluta, ut accipimus, & prædict' B. qui habet enitiam partem hæreditatis illius, sectam illam fac' ad hund' prædict' vel ad cur' præd' pro se & præd' A. I. R. & F. particip' suis, iidem A. I. R. & F. ad sectam illam faciend' contribuer' contradicunt, ad grave damnum ipsius B. & cont' formam provisionis præd' ut dicit & habeas, &c.*

And if there be many Coparceners, and the Eldest do the Suit and the other Coparceners agree with the Eldest for a Rate; now the Writ of Contribution shall be brought against the others, who would not contribute, &c. And if many be enfeoffed of Land, for which one Suit ought to be done, &c. (a). Now if they agree among themselves, that one of them shall do the Suit, and that the others shall contribute unto him, if he do the Suit, and afterwards the others will not allow him for that

(a) And so it also seems of several not limit in such a Case who shall do the Feoffees, for the Statute of Marleb. does Suit,



that Suit according to their Rate, then he shall have the Writ of Contribution against them, and the Writ shall mention the Agreement, &c. and if they cannot (a) agree, then the Lord shall distrain them all for all their Suits, if the Suit be not done; but if one Feoffee of his own Will do the Suit for them all, without any Agreement for the same made between them, the Lord cannot then distrain the others for the Suit; for as to the Lord, it is not material whether there be any Agreement between them or not; but between the Feoffees, he that did the Suit shall not have the Writ of Contribution against his Companions, without Agreement thereof made betwixt them. But if one Jointenant do make a Feoffment in Fee of his Part, his Feoffee shall do a several Suit by himself. But the other Jointenants shall do but one Suit by the Statute of *Marlebridge, cap. 9.* But every Tenant in Common shall do several Services and several Suits. And the Process in this Writ is Summons, Attachment and Distress.

Ant. 159.

*Writ de Contra formam Feoffamenti.*

St. Marl. c. 9.

**E** THE Writ *de Contra formam Feoffamenti* lieth, where a Man doth infeoff another before the Statute of *Quia emptores terrarum*, (b) to hold of him by Homage, Fealty, and Rent by Deed, and afterwards he will distrain for Suit or other Services to be done unto him; he who was infeoffed, or his Heir, shall have this Writ of *Contra formam Feoffamenti*, &c.

5 E. 4. 85.  
Br. cont. formam Feoffamenti.

**F** And this Writ may be directed unto the Lord himself, or unto his Bailiffs, commanding them that they do not distrain him against the Form of his Grant; and this Writ is a Prohibition in it self. And if the Lord and Bailiffs do contrary to the Writs sent to them, the Tenant thereupon shall have an Attachment, and a Distress; and the Form of the Writ is such:

[163.]

**B** Rex I. vel ballivis I. salutem. Cum de communi, &c. provisum sit, ne qui occasione tenementor' suor' distringantur ad sectam faciendam ad curiam

C c c 2

dominorum

(a) See *Kelw. 131.* & *ibid. 30.* &c. And yet the other joint Feoffees shall make but one Suit. See 45 E. 3. 23. per *Skipw.* If Land be charged to a Suit real, as to a Hundred or Wapentake, or other real Service, if the Land out of which the Suit issues comes to several Hands, so that each of them knows his Severalty, each of them shall make several Suits. See 11 E. 3. *Avowry 101.* If Land be charged with Suit to a Hundred, which is afterwards severed into Parcels, several Suits shall be made; yet see before 159. that the Statute of *Marleb.* extends to Suit at the Hundred, and by *Shard and Stone*, when the Lands come afterwards into one Hand, there shall

be but one Suit; but by *Parning* there shall be two Suits, and two Amercements. See the Register 177. *Rex Ballivis, &c. Cum de communi concilio, &c. provisum sit quod si plures hereditates ad unum heredem descenderint, vel aliquis sibi a diversis feoffatoribus tenementa acquisiverit pro illis hereditatibus & tenementis diversis ad unicam curiam exigi non debeant secta diversa, vobis precipimus quod non Distringatis, &c.*

(b) But if the Feoffment be made before Time of Memory, one shall not have a *Contra formam Feoffamenti*, but a *Ne injuste vexes*, for such a Feoffment is not pleadable. 12 H. 4. 24.

dominorum suorum, nisi per formam feoffamenti sui ad sectam illam specialiter tenent', aut ipsi vel eorum antecessores tenement' illa tenent' eam facere consuever' ante prim' transfretation' Domini Henrici Regis in Britan. Tibi vel vobis præcipimus, quod non distringas vel distringatis A. ad faciend' sectam ad Curiam tuam de I. vel ad Curiam prædict' Domini vestr' de N. contra formam provision' prædict' & distriction', &c.

17 E. 3. 8. And no Person shall have this Writ of *Contra formam Feoffamenti*, but C  
4 Co. 121. b. he who was (a) enfeoffed, or his Heirs who are Privies to the Deed;  
14 H. 4. 5. but if the Feoffee to whom the Lands (b) were given to hold of the Feoffor and his Heirs by the Deed, make a Feoffment over to hold of the chief Lord, &c. The Feoffee shall not have this Writ *de Contra formam Feoffamenti*, because he is not Party or Privy to the Deed, but he shall (c) rebut the Lord by that Deed, to claim other Services than are mentioned in the Deed. And that Writ is a Prohibition unto the Lord D  
4 E. 2. A- and his Bailiffs; and if he distrain after the Writ delivered to him, the  
vowry 122, 202. Tenant shall have an Attachment against him, and thereupon he shall  
22 H. 6. 50. recover his Damages if it be found for him, &c. and the Process is  
36 H. 6. 7. Prohibition, Attachment and Distress.  
22 E. 3. 28.

And the Rule in the Register is, *if any for Suits undue against the Form E of any Statute, to the Court of any to be done, be distrained, he may have a Prohibition against the Distrainer, and after an Attachment if need be: And afterwards Attachment, nor can he be attached, unless a Prohibition be first directed unto him.*

10 E. 3. 25. And the Opinion of *Parnis* is, P. 10 E. 3. That if a Man give Land F  
31 E. 1. A- in Frank-marriage, or in Frankalmoign, that the Donor shall not have  
vowry 249. a Writ of *Contra formam Feoffamenti*; nor his Heirs, because there are not any Services expressed in the Deed, for which Reason he is out of the Statute of *Marlebridge*, cap. 9. but they may rebut the Lord by such Deed.

16 H. 3. A- And if the Lord confirm the Estate of the Tenant to hold by lesser G  
vowry 243. Services, &c. The Tenant shall have a Writ of *Contra formam Feoffamen-*  
11 E. 3. *ibid.* *ti*; if he be distrained for more Services than there are specified in the  
100. Deed of Confirmation. M. 16 E. 3. *Avowry* 243. 30 E. 3. 13. per *Seton*, &c.  
28 E. 3. 92. And in a *Contra formam Feoffamenti*, the Person did count upon the H  
*Avowry* 241. Deed, and the Distrainer demanded *Oyer* thereof, and could not have it.  
M. 3 E. 2. *Action sur le Case* 5.

And

(a) But the contrary has been adjudged, where the Feoffee of him to whom the Deed was made, brought the Writ against the Grantee of him who made the Deed, and he was adjudged to answer; and by *Wilby* it had been often so adjudged. 4 E. 3. 25. See 4 H. 4. 5. per *Thirn.* a Feoffee, &c. See 10 E. 3. 25. acc. per *Trem.*

(b) See 4 E. 2. *Avowry* 202. per *Cur. cont.* if he had paid him himself. 4 E. 2. *ib.* 201.

(c) A Stranger may rebut the Feoffor or his Heirs by the Deed of Feoffment notwithstanding the Seisin. 5 E. 3. 19. 8 E. 3. 67. 4 E. 2. *Avowry* 202. See *contra* 4 E. 2.

*Avowry* 401. *Rebutter* 22 E. 3. 18. although the Feoffment was made to a Stranger to the Tenancy, he shall not rebut a Stranger in the Seignior, after Seisin by Deed of Confirmation before Time of Memory. 11 E. 3. *Avowry* 100. nor by Deed of Feoffment. 10 E. 3. 25. he shall not forejudge the Tenant. 7 E. 3. 8. See 44 E. 3. 39. *cont.* per *Kirt.* The Party rebuts the Lord by Confirmation of his Grantor, to hold by less Services. 28 E. 3. 92, 93. per *Cur.* See 10 *Aff.* 29. 28 *Aff.* 33. 12 R. 2. *Avowry* 266. 34 E. 3. *ibid.* 258. 19 E. 3. *ibid.* 122.



**I** And the *Contra formam Feoffamenti* lieth only against the Feoffor and his Heirs. 10 E. 3. 25.  
7 E. 3. 8.

*Writ de Coronatore eligendo vel exonerando.*

**K** **T**HE Writ de (a) *Coronatore eligendo* lieth, where a Man who is Coroner of any County dieth, or be discharged of his Office, then that Writ shall be awarded unto the Sheriff, that he in full County by the Freeholders of the County, choose another in his Place, and to certify the Election, and his Name who is chosen, in the Chancery. 4 E. 4. 44.

**L** And in every County commonly there are four Coroners, and in some Counties six Coroners, and in some Counties less, as the Usage is; and if any of them dieth, or is discharged, then shall issue such Writ:

**M** *Rex Vic', &c. Quia L. nuper unus Coronatorum nostr' in com' tuo diem clausit extremum, ut accepimus; Tibi præcipimus, quod si ita est, tunc in pleno com' tuo de assensu ejusdem com' loco ipsius L. eligi fac' unum alium Coronatorem juxta formam statuti inde edit' & provisi, qui præstito sacrament' prout moris est, extunc ea fac' & conservet, quæ ad officium Coronatoris pertinent in com' prædict', & talem eum eligi fac' quo melius sciat & possit officio illi intendere, & nomen ejus nobis scire fac'. Teste, &c.*

And now it appeareth by the Writ, that upon Election made, the Sheriff shall give him his Oath duly to execute his Office. *Vi. Stat. West. 1. cap. 10.*

**N** And the Coroner shall be discharged of his Office by the King's Writ sent unto him, and thereupon shall issue another Writ directed unto the Sheriff to choose a new Coroner, and that Writ shall recite the (b) Cause of the Discharge of the other Coroner; and the Writ shall be such:

*Rex Vic', &c. Quia R. unus Coronatorum nostrorum com' tui divers. negotiis nostris in com' tuo faciend' ita occupat' est quod ea quæ ad officia Coronatoris in eodem com' pertinent exercend' vacare non potest, ut pro certo intelleximus, ipsum ab officio illo amovimus: Tibi præcipimus, quod unum alium Coronatorem, &c. ut supra, vel sic: Quia ex testimonio accepimus fide digno, quod W. T. unus Coronatorum nostrorum com' tui adeo languidus est, & senio confectus, quod ad ea, &c. exercend' non sufficit, ipsum W. duximus ab officio illo removend. Et ideo tibi præcipimus, &c. Vel sic: Quia W. unus Coronat', &c. minus idone' est ad offic' illud exequend' sicut ex relat', &c. Vel sic: Quia accepimus, quod W. coronat' com' prædict' nuper elect' terr' vel tenementa in eodem com' non habet, in quibus juxta statum suum morari possit pro prædict' offic' (c) exercend. Tibi præc', &c. Vel sic: Quia*

*L. 5 E. 4. acc. By our Judgm. Coroner shall not be discharged by Demise of the King, because he is made by Writ; contr. of others, who are by Commission. 4 E. 4. 44.*

(a) Note; A Coroner made Sheriff is discharged from his Office of Coroner. *C. L. 79.*

(b) But this Cause is not traversable. *3 Co. 58.*

(c) Note; If there are four Coroners in one County, and a Writ is directed to them, if one dies, yet the other three may Execute the Writ, because there still remains the greater Number; but if before the

[164.] *Quia A. unus coronat', &c. morbo paralyfis percuss. &c. Vel, quia in extremis partibus totius com' morat' per quod ea quæ ad offic', &c. commodè exercere non potest. Vel, Quia in officium vic' com' prædict' est electus. Vel, in viridar' forestæ nostr' de S. electus extitit per quod, &c. Vel, Quia non habet centum sol' terræ, ut dic. Vel, Quia non est miles, &c.*

But it seemeth, that at this Day, this last Clause is not Cause for to remove the Coroner : For if he have sufficient Lands within the County, it sufficeth, although he be not a Knight, notwithstanding the Statute which requireth that he be a Knight. For those Words are put into the Statute, to the Intent that he should have sufficient within the County, and for no other Cause. And it seemeth, the King by his **A** Writ may command the Sheriff to choose two or three Coroners, if there want so many in the County.

And if the Sheriff choose one to be Bailiff of the Hundred or Wapentake : Or if the Lord of a Liberty choose one to be Bailiff of the Liberty, who hath not sufficient Land within the County, according to the Statute of *West. 2.* (but see the Statute of *2 E. 3. cap. 4.* thereof) then a Writ shall be sent to the Sheriff for to discharge such Bailiff, and to choose another in his Place, and upon that a Man may have an *Alias*, and *Pluries*, and Attachment against the Sheriff, if that he do not according to the Writ ; and the Writ is such :

*Rex Vic', &c. Cum in Statuto apud Westmon' nuper edit' contineatur, quod nullus sit vic' vel ball' libertatis Wapentag' hundred' nec tithingi, nisi habeat terras & tenementa suffic' in eodem Comitatu, unde nobis seu populo nostro in hac parte respondere possit, si quis super eum conqueri voluerit, jamque intelleximus, quod W. de T. qui terras seu tenementa in eodem Comitatu non habet, ball' wapentagii nostri de B. fecisti, in nostri contemptum, & populi nostri in hac parte damnum non modicum & gravamen, & contra formam Statuti prædict'. Et ideo tibi præcip' quod si ita est, tunc ipsum W. a ball' præd' sine dilatione amoveri facias, & alium loco suo competentem constitui vel ordinari fac' juxta formam Statuti præd'. Teste, &c.*

*Writ*

the Execution of the Writ, three shall die, so that there is only one remaining, he cannot execute the Writ until others are elected. 14 H. 4. 39. If there are four Coroners, and a Writ is directed to them, three Coroners cannot make a Re-

turn of the Execution of the Writ. 31 Aff. 20. But if one of them makes Execution of it, and the Return is by all of them, there 'tis good, as if one of them only sits at the County-Court on the Exigent. 14 H. 4. 34. per Hank. in a *Capias*. 39 H. 6. 41.



*Writ de Electione Viridariorum Forestæ.*

**C** **T** H E Writ of Election of the Verderors of the Forest lieth, where any of the Verderors are dead, or removed from their Offices, &c. Then the King shall send a Writ to choose another in his Place, and it shall be directed to the Sheriff, and is such :

*Rex Vic', &c. Quia A. nuper unus viridar' nostrorum forestæ nostr' mortuus est, ut accepimus : Ideo tibi præcipimus, quod si ita est, tunc in pleno com' tuo de assensu ejusdem comit' loco prædict' A. eligi facias unum alium viridarium, qui præstito sacramento prout moris est, extunc ea faceret & conservaret quæ ad officium viridarii pertinent in foresta prædict', &c.*

And by that it appeareth, that the Verderor shall be chosen in the same Manner as the Coroner of the County shall be chosen by the Freeholders of the County.

**D** And if a Coroner or Verderor be discharged of his Office by false Suggestion by the King's Writ directed to the Sheriff, then the Party may come into the Chancery, and require a Commission to enquire of the said false Suggestion, and to return the Enquiry before the King into the Chancery ; or the Justices of the Forest may certify the King of the false Suggestion under their Seals ; and if it be found to be false, then the King may make a *Supersedeas* to the Sheriff, that he do not remove the Verderor, if, &c. And if he be removed that he suffer him to exercise his Office as he did before ; and the Writ is such :

*Rex Vic', &c. Licet nobis sugg' in cancellar' nostra, quod A. unus viridariorum in foresta nostra de S. non habuit terras seu tenementa infra limites forestæ prædict' nec infra forestam præd' morabatur ; Tibi præcip' quod si ita est, tunc in pleno Com' tuo de assens. ejusd' com' loco prædict' A. eligi faceres unum alium viridar' qui præstit' sacramento, prout moris est, extunc ea fac' & conserv. quæ ad offic' virid' pertine' in foresta præd' : Quia tamen testificat' est coram nobis in cano' nostra per dilect' & fidel' I. de S. Justic' nostr' ultra Trentam, quod idem A. terr' & tenementa habet sufficient' infra forestam prædict' & idone' & sufficiens existit pro officio supradict' ; Nos nolentes ipsum A. ab offic' illo occasione hujus falsæ sugg' amoveri, Tibi præcip' quod execut' brevis nostri præd' occasione falsæ sugg' præd' tibi direct' supersed' omnino, & præfat' A. offic' illud exercere permittas, sicut hactenus fieri consuevit. Teste, &c.*

*Writ*

*Writ for the Election of the Clerk to take Obligation  
upon Statutes-Merchant.*

[165.] **T**HE Writ for the Election of the Clerk assigned to take and make **E** Obligation thereof by Statute-Merchant, lieth where the Clerk, who is assigned to take such Obligation, dwelleth in another Place, or is busied in other Affairs that he cannot intend or follow the Office, or that he hath not sufficient Lands, &c. to answer for his Misdoing; then upon a Surmise made in the Chancery, such Writ shall be made directed unto the Mayor or Bailiff to discharge him, and to choose another; and the Writ is such, viz.

*Rex ballivis & probis hominibus vill' de H. salutem. Quia ex relatu accepimus plurimorum quod R. qui custod' majoris peciæ sigilli juxta formam Statuti de Acton Burnell in villa prædict' accipiend' deputat' jam habet, in villa prædict' moram non facit, per quod ad ea quæ ad officium suum pertinet in hac parte faciend' intendere non potest, in mercatorum & aliorum ad dict' vill' confluent' dispend' non modic' & gravamen: Vobis mandamus, quod si ita est, tunc loco ipsius R. eligi fac' unum alium homin' de vill' præd' qui ad illam custod' pertinet faciend' melius sciat & possit intendere, & nos de nomine illius quem sic elegeritis, communi sigill' vestro distincte & aperte sine dilatione reddatis certiores, hoc breve nobis remittentes. Teste, &c.*

And it appeareth by the Statute *de Mercatoribus*, that the King shall make the Clerk, and by it appeareth, that the Mayor or Bailiffs shall choose the Clerk, &c. but it seemeth that Writ is granted *ex gratia Regis*. For he might send a Writ of Discharge unto the Clerk, and make a new Clerk (as it seemeth) at his Pleasure.

*(a) Writ de non ponendis in Assisis & Juratis.*

29 E. 3. 15. **T**HE Writ *De non ponend' in Assisis & Juratis* is grounded upon the **A** Statute of *West. 2. cap. 38.* and upon the Statute of *Articuli super Chartas, cap. 9.* which Statutes declare what Persons the Sheriff ought for to impanel, and what Number he ought to impanel in Juries and Right upon the Grand Assise, and after he shewed a Charter of Exception, *De non ponendis, &c.* and it was not allowed, the same Suit in Attaint.

Inquests,

(a) Note; The Sheriff, or other Officer is under 70 Years of Age, forfeits 20 l. by who discharges any Person by Colour of Stat. 7 and 8 W. 3. Vide *Post. D.* any Writ, &c. to serve as a Juror, who



Inquests, and the Writs declare the Effects of the Statutes; and the Writ shall be such:

Rex Vic', &c. Cum inter cæteros Articulos quos dominus E. quond' Rex Angl', &c. ad emendand' status populi regni sui ordinavit, concessum sit, quod nullus Vic' vel ballivus ponat in inquisitione nec jurat' plures homines, nec alios, nec alio modo quam ordinat' est per statutum, & quod ponant in inquisitionibus & juratis hujusmodi homines magis propinquos, magis sufficient' & minus suspectos: Et qui secus fecerit, & inde convict' fuerit, reddat querenti damna sua in duplum, & sit in gravi m'ia nostra: Tibi præcipimus, quod in jurata  
24 Militum quam H. T. de K. arrainavit coram, &c. per breve nostrum versus W. F. ad convincend' Juratores ass. novæ disseisinæ, quæ inter ipsum W. & præf. H. T. & alios in brevi nostro originali content' sum' fuit & capta apud E. per breve nostrum coram nobis de tenementis in C. homines vicinet' illius magis propinquos, magis suffic' & minus suspect', per quos rei veritas melius sciri poterit & inquiri, poni fac' juxta formam Articulorum præd', & hoc nullatenus omittas.

**B** And by this Writ it appeareth: When a Man sueth an Assise of Attaint, or such Actions, in which are Jurors at the first Day, &c. That he may also sue this Writ directed to the Sheriff, that he return the  
**C** Panel according to the Statute; and if the Sheriff do not accordingly, then it seemeth the Party shall have an Attachment against the Sheriff. And this Writ may be sued as well by the Defendant as by the Plaintiff or Demandant, and also although that the Party do not sue forth the Writ, yet if the Sheriff or Bailiff of the Liberty return a Panel against the Form of the Statute, the Party Defendant or Plaintiff may have an Action upon the Statute against the Sheriff, &c. because the Statute is a Prohibition in it self; and the Form of the Writ of Attachment upon the same is such:

Rex Coronatoribus suis in Com' Linc', &c. Ponite per vadios, &c. B. Vic' nostrum com' prædict' quod sit offensur' quare cum inter cæteros Articulos, &c. (usque ibi,) in gravi misericord' nostra, & nos nuper ad prosecutionem H. asserentis quandam inquisitionem capi deber' coram Justic' nostris præd' de loquela, quæ fuit coram eisdem justic' per breve nostrum int' R. petentem & T. tenentem de manerio de S. cum pertin', præcepimus præfat' Vic' quod in inquisit' illa homines magis propinquos, magis sufficient' & minus suspectos poneret, juxta formam Statuti & Articulorum præd', idem Vic' in eadem inquisitione homines magis remotos, minus suffic' & magis suspectos posuit, contra formam eorundem Statuti & Articulorum, ac contra tenorem mandati nostri præd' ut dic' & habeas, &c.

**D** And by the Statute of Westm. 2. aforesaid, the Sheriff ought not (a) West. 2. Bro. to impanel Men who are sick or decrepit, nor Men who at the Time of Jurors 49. the Summons were not dwelling within the County, nor Men above the Age of threescore and ten Years, &c. and if he do, then he, or those who are impanelled by the Sheriff, may sue this Writ unto the Sheriff, commanding him that he do not impanel them, &c.

D d d

And

(a) See the Stat. 7, 8. W. 3. cited *supra*, A.

48 E. 3. 30.  
27 H. 8. 22.

And Barons who are Lords shall not be impanelled upon Inquests nor Assizes, &c. if their Presence be not necessary; but they shall have a Writ unto the Sheriff to discharge them, thus :

[166.]

*Rex Vic', &c. Quia Barones regni nostri in Assisis, Juratis, seu Recognitionibus aliquibus poni non consuever' ut dicunt, nisi eorum sacramentum adco sit necessarium, quod sine illis veritas inquiri non possit; Tibi præcipimus, quod dilectum & fidelem nostrum A. in Assisis, Juratis seu Recognitionibus aliquibus non ponas seu poni facias contra voluntatem suam, sine mandato nostro speciali, nisi sua present' ob aliquam causam specialiter exigatur. Teste, &c.*

But if the Sheriff hath returned any Lord in Juries or Assises, &c. then he ought to bring a Writ unto the Justices, reciting that he is a Peer of the Realm, commanding them for to discharge him, otherwise he shall be sworn, and if he do not appear, he shall lose Issues, &c.

There are also other Writs for those who are Sick, or past 70 Years of Age, or those who are not dwelling in the County, and the Writ is such :

*Rex Vic', &c. Cum de Com' concilio, &c. provisum sit, quod homines perpetuo languidi. Vel sic; Quod homines tempor' sum' Vic' in patria non commorantes. Vel sic; Quod homines ætatem lxx. annorum exceden' non ponantur in Assisis, Juratis, &c. Tibi præcipimus, quod si A. sit perpetuo languidus. Vel sic; Ætatem lxx. annorum excedens, vel in tempore sum' tue in balliva tua, vel com' tuo moram non fecerit, tunc ipsum, &c. in Assisis, Juratis, seu Recognitionibus aliquibus non ponas, seu poni facias, contra formam provisionis præd'. Teste, &c.*

Ant. 16.  
Post. 266.

Clerks who have Lands or Tenements by Descent or Purchase may be put and sworn in Assises and Inquests as well as other Lay Persons, as appeareth by the Register; and it seemeth the Law is such. But if such Clerk be in the King's Service, he shall have a special Writ for to discharge him; and the Writ is such :

*Rex Vic', &c. Quia Magister R. Clericus in obsequio nostro, vel in obsequio venerabilis Patris J. Eliens. Episc' his diebus moram fac' continuam, ut dicitur; Tibi præcipimus, quod ipsum R. occasione terrarum & tenementor' quæ tenet in comitat' prædict' in assisis, juratis, seu recognit' aliquibus non ponas seu poni fac' quamdiu in obsequio nostro, vel ejusdem Episc' moram facit suprædict'. Teste, &c.*

And by the Writ it appeareth, that a Clerk shall be put and returned in Panels and Juries, if he be not in the Service of the King or other Person for whom the King will write to the Sheriff, that he do not impanel him, &c. but if the Sheriff do impanel and return such Clerks, they ought for to appear, otherwise they shall lose Issues, and they have no Remedy if they have not such Writ as before.

And if the Sheriff do impanel, or return them in Juries after such Writ directed unto him, then, as it seemeth, they shall have Attachment against the Sheriff, &c.

St. 21 E. 3.  
Jurors. p. 3.

But if the Sheriff do return Men who are dwelling in other Counties, or past 70 Years of Age, or those who are Sick, then they shall have an Action upon the Statute against the Sheriff, although they have



not sued forth such Writ, directed to the Sheriff, because the Statute is a Prohibition to him, that he return not such Persons, and, it seemeth, the Sheriff is bounden to take Notice of the Statute at his Peril; *tamen quære.*

And if the Sheriff do return any Panel-Men who are not sufficient to pass in the Action of Lands and Tenements, &c. then the Juror may have an Action upon the Statute; which is such:

*Rex Vic', &c. Cum ad communem utilitatem populi regni nostri de Commun' concilio ejusdem regni statutum sit, Ne quis ponatur in Ass. juratis seu recognitionibus aliquibus, nisi habeat terras aut tenementa ad valenc' xl. s. per Annum ad minus, ita tamen quod coram Justic' itinerant' ad Communia placita in itineribus suis, & etiam in Assisis, juratis seu recogn' quæ Civitatibus, Burg' & aliis villis mercatoribus emiserint faciend', fiat prout hactenus fieri consuevit: Tibi præcipimus, quod si A. terras vel tenementa ad valenc' tanti per annum non habeat, tunc ipsum A. in Assisis, juratis, seu recogn' non ponas seu poni facias contra formam Statuti, &c.*

E And if the Sheriff do the contrary, &c. he shall have an Attachment Stat. 2 E. 1. against the Sheriff. And by the Statute the Sheriff ought not to im- Jurors 3. panel any Juries to try any Matter which shall be tried out of the County, if they may not expend 5 l. by the Year, &c. And if he do, the Party shall have an Action upon the Statute of 21 E. 1. *de ponendis in Assisis & Juratis.*

F And if the Sheriff return any Panel-Men who dwell within antient Ant. 14. F. Demesne for their Lands within antient Demesne, then they may have a Writ against the Sheriff, that he do not return them; and the Writ is such:

*Rex Vic', &c. Cum secundum legem & consuetudinem regni nostri hactenus obtiniam & approbatam, homines & tenentes de maneriis quæ sunt de antiquo dominico Coronæ Angl' pro terris & tenementis quæ tenent de eodem dominico in Ass. jurat' seu recogn' aliquibus poni non debeant, nisi tantum in his quæ in Cur' hujusmodi maner' debeant fieri; Tibi præcipimus, quod homines & tenentes nostros de manerio nostro de I. quod est de antiquo dominico Coronæ Angl' ut dic', pro terris & tenementis quæ tenent de eodem manerio, in assisis, juratis, seu recognit' aliquibus extra Cur' maneriorum prædict' non ponas, seu poni facias, contra legem & consuetud' prædict', nisi terras & tenementa de alia tenura teneant, per quam secundum formam Statuti de Comuni concilio regni nostri inde provisi, in assisis, juratis, seu recogn' poni debeant, & distinctionem, si quam eisdem hominibus & tenentibus nostris occasione prædict' feceris, sine dilatione relaxes eisdem. Teste, &c.*

And by that Writ appeareth, that all the Tenants may sue the Writ, [167.] as they may sue forth a *Monstraverunt*; and if the Sheriff do contrary to the Writ, they shall have an Attachment against him, and any of the Tenants may sue the Writ in his own Name if he will; and then the Writ shall be such:

*Rex Vic', &c. (ut supra usque) Tibi præcipimus, quod A. tenentem. Vel sic; A. & B. tenentes de manerio de M. quod est de antiquo dominico, &c. ut supra.*

And although that the Manor be not in the King's Hands ; yet the Tenant shall have the Writ against the Sheriff if he impanel them, &c. And also they shall have the same Writ against the Bailiffs of the Liberty who have Return of Writ, if they return any of the Tenants who hold of a Manor which is antient Demesne, for Juries, Assises, or Inquests, &c.

And also the Sheriff ought not to return Coroners in Assises, Juries or Inquests, nor Verderors, nor Foresters, nor other Officers of the Forest, and they may have a Writ for to discharge them ; and the Writ shall be such :

*Rex Vic', &c. Quia A. unus Coron' nostrorum com' tui ad ea que ad officium coron' pertinet in eodem com' exercend' intendere non potest, si in Ass. Furatis seu Recogn' aliquibus ext' eundem com' ponat' ; Tibi præcip' quod si ita est, tunc A. in Ass. furat' seu Recogn' aliquibus extra com' tuum non ponas seu poni fac', quo minus officio intend' possit supradict'.*

And by that it appeareth, that the Sheriff may return the Coroner A. to enquire of Affairs in the County before Commissioners or Justices of the Peace. But upon Actions sued in the Common Pleas or King's Bench, they shall not be returned in any Panel. And for Verderors or Foresters, or other Officers, the Writ is such :

*Rex Vic', &c. Cum Dom' Edw' quondam Rex Angl' progenitor noster per literas suas patent' concessit pro se & Hæred' suis quod forest' viridar' aut alii ministri forest' suæ non ponant' in Ass. Furatis seu Recogn' aliquibus extra forestam illam capiend' ; Tibi præcip' quod si A. viridarius noster forestæ nostr' de S. existat, aut forestar', &c. tum ipsum A. in Ass. furat' seu Recogn' aliquibus (a) extra forestam illam capiend' non ponas seu poni fac' juxta formam provisionis prædict', & district' si quam. Vel sic ; Quia unus viridar' nostrorum forestæ nostr' de S. in com' tuo, ad ea que ad offic' viridar' pertinent, in eadem foresta exercend' intendere non potest, si in Ass. &c. ponatur extra forestam præd' ; Tibi præcipimus, ut supra.*

### *Writ upon the Statute of 23 Ed. 3.*

Stat. 22 E. 3.  
Labourers.  
P. 2.

**I**F a Man do retain my Servant being in my Service, for which the B Servant departeth from me, &c. and goeth to serve the other, I shall have an Action against him who retained him, and against the Servant, upon the Statute of 23 Ed. 3. And the Writ shall be Attachment against them, because the Statute is a Prohibition to them, that they shall not do so ; and the Form of the Writ is such :

*Rex Vic', &c. Si A. fecerit, &c. tunc attachias I. de B. ita quod eum habeas coram Justic' nostris, &c. ad respondend' tam nobis quam præfat' A. quare cum per nos & concil' nostrum pro communi utilit' regni nostri ordinat' sit,*

(a) See Rot. Claus. 9 H. 3. M. 5. Viridarii & Forestarii Domini Regis de Feodo non ponantur in Assisis.



fit, Quod si aliquis messor, falcator aut alius operar' vel serviens cujuscunque status seu condit' fuerit in servitio alicujus retent' ante finem termini concordat' a dicto servitio sine causa rationabili vel licentia recesserit, pæn' imprisonmenti subeat, & nullus sub eadem pæna talem in servitio suo recipere vel retinere præsumat: Nec ullus vadia, liberationes, merced' seu salaria majora quam solita sunt præstare anno regni Regis Ed. 3. progenitor' nostri 20. vel annis communibus quinque vel sex proxim' præcedentibus, alicui servienti solvat velolvere promittat sub pæna dupl' illius quod sic solutum aut promiss' fuerit, illi qui ex hoc senserit se gravat' applicand', præd' I. R. de C. nuper servien' præd' A. in servit' suo apud B. retent', qui ab eodem servit' ante finem termini inter eos concordat' fact' sibi promiss' per ipsum I. de salar' plus solit' recipiend' sine causa rationabili & licent' præfat' A. recessit in servic' ipsius I. quanquam ipse de præf. R. eidem A. restituend' requisitus fuerit, admisit & retinuit, in nostri contemptum, & ipsius A. grave damnum, & contra formam ordination' præd', attachias etiam præf. R. ita quod eum habeas tunc ibid' ad respondend' tam nobis quam præf. A. quare a servit' ejusdem A. sine causa rationabil' & licentia sua, ut præd' est, recessit, in nostri contempt' & ipsius A. grave damnum, & contra ordinationem præd' & habeas ibi hoc breve. Teste, &c.

And he may sue the Writ against the Master only, or against the Servant only, and it appears when the Writ is against the Master and the Servant, then there are several Attachments made in the Writ. 9 H. 6. 7.

C (a) And if a Man be required to serve, and hath not Lands nor Tenements to live upon, nor other Art or Trade, and he refuseth to serve, then he who requireth him to serve shall have this Writ: Stat. 23 E. 3. c. 1.

Rex Vic', &c. Si W. &c. tunc attachias R. ita quod eum habeas coram Justic' nostris, &c. ad respondend' tam nobis quam præf. W. quare cum per nos & concil' nostrum pro communi, &c. (ut supra usque ibi) ordinat' sit, quod quilibet homo & fæmina dicti regni nostri, cujuscunque conditionis fuerit libera vel servilis, potens in corpore, & infra ætatem sexaginta annorum, non vivens mercatura, nec certum exercens artificium, nec habens de suo proprio unde vivere possit, nec terram propriam circa cujus culturam se poterit occupare, & alteri non serviens, si de serviend' in servitio congruo considerato statu suo fuerit requisitus, servire teneatur illi qui primo duxerit requirend', & percipiat duntaxat vadia liberation' mercedes, seu salaria quæ in locis ubi servire debeat consueta sunt præstari Anno regni Regis Ed. 3. 20. vel annis communibus quinque vel sex præced'. Et si talis vir vel mulier sic de serviendo requisitus hoc facere noluerit, statim capiatur & mittatur proximæ gaolæ, & ibidem sub arcta moretur custod' quousque securit' invener' de serviend' in forma prædict', idem R. de conditione hujusmodi existens præfat' W. quanquam ipse ad serviend' eidem W. pro salario statui suo competenti dictis annis communibus præcedent' conf. sæpius requisit' fuerit, penitus servir' recus. in nostri contemptum, & ipsius W. grave damnum, & contra formam ordination' prædict' & habeas, &c. Teste, &c.

[168.]

And

(a) See 39 E. 3. 6. one cannot join, in one Writ, two Persons who refuse to serve.

Bro. La-  
bourers 2.

And if the Servant be retained in Winter to serve, and after he will A depart from his Master in the Summer, and serve in another Place, then he, whom he served in Winter, shall have a Writ to compel him to serve him in Summer, which is such:

*Rex Vic', &c. Si W. de C. &c. tunc pone I. de S. quod sit, &c. ad respond' tam nobis quam præf. W. de C. quare cum per nos & concil' nostrum pro communi utilitate regni nostri stat' sit, quod nullus serviens cujuscunque fiat fuerit seu conditionis, extra villam, ubi moratur in Hyeme ad serviendum alibi in æstate, si servitium in eadem villa invenire possit, sub pœna imprisonamenti exeat, excepto quod homines in comitat' Staff. Lanc' & Derb' & de March' Walliæ tempore Augusti ad laborandum in aliis com' veni'r', & salvo, prout hactenus facer' consuever', redi'r' possint, præfat' I. in servitio ipsius W. apud F. in Hyeme nuper retentus, prædict' W. seu alicui alio in villa prædict', quanquam ipse ad serviend' in eadem villa pro salario competentis sapius requisitus fuerit, servire recusavit, in nostri contemptum, & ipsius W. grave damnum, & contra formam statuti præd', & habeas ibi nomina pleg' & hoc breve. Teste, &c.*

The Lords of Towns, or Justices of Peace, may commit Vagrants B to Prison, if they will not serve, and they may command the Gaoler to set him at Liberty without any other Writ.

And if a Man be retained in Service, and go wandering abroad out C of his Service, another Man may compel him to serve him, &c. because he is out of Service.

(a) And so if a Man do retain another's Servant, not knowing that he was in the Service of the other, he shall not be punished for so doing, if he do not retain him after Notice of his first Service.

(b) An Infant of 12 Years of Age shall be bound by his Covenant D to serve in Husbandry.

A Woman of such Age shall be also bound to serve in Husbandry by her Covenant.

(c) If a Man take an Infant or other out of another's Service, he shall be punished, although the Infant or other were not retained.

An

(a) Note; If it be in the same County, he ought to take Notice of the first Retainer at his Peril, but he is not punishable, if he be found Vagrant in another County. 17 E. 4. 7 18 E. 4. 5. except he procure his Departure; and if so, he is punishable by the Statute; but if one retains a Servant, who has left his Master within the Term, or if one procures a Servant to depart within his Term, and after retains him, so that he has Notice, yet he is not punishable at Common Law, *de Serviente abducto*. 11 H. 4. 24. adjudged: *Sed quare*, and 9 E. 4. 32. seems *contr.* and if one takes my Servant out of my Service, against my Will, tho' it be with the Servant's good Will, yet a general Writ of Trespass lies.

(b) See the like, where an Infant of 10 Years old was discharged of an Action on the Stat. *contr.* if he had been 12 Years old; yet by *Hankf.* a Writ lies against a Stranger who takes him. 2 H. 4. 18. an Infant by Custom may bind him if Apprentice, 9 H. 6. 8. and the Diversity agreed. See 21 H. 6. 31, 33. 9 H. 6. 10. Stat. 5. *El. of Labourers*.

(c) See where a Servant was but 9 Years old, in a Writ against him, and the Husband and Wife who had retained him, the Infant was discharged, but the Husband and Wife put to answer, and they plead that he was not retained by them, and Issue taken, *etc.* 29 E. 27. but as it seems to me, *Finchden* there takes a good Diversity,



An Infant by his Covenant shall be bounden to serve in Husbandry, although he may spend 40 Shillings or 12 Marks by the Year.

E And to a Gentleman by his Covenant shall be bound to serve, although he were not compellable to serve. For if a Gentleman, or (a) Chaplain, or Carpenter, or such which shall not be compelled to serve, &c. (b) yet if they covenant to serve, (c) they shall be bound by their Covenant, and an Action will lie against them for departing from their Service.

F And if a Man do retain one to serve him for 40 Days, and another doth afterwards retain him to serve him for a Year, the first Covenant is avoided, because the Retainer was not according to the Statute.

And so if a Man be retained to serve at every Time he shall be required, it is no Retainer according to the Statute, but a Covenant, if it be by Deed; and without Deed it is void.

G And a Man shall not have an Action against an Apprentice upon his Departure, upon the Statute. 27 E. 3. 22.

H And if a Man do retain one to serve him, and doth not express for how long he shall serve him, he shall serve him for a Year; for that Retainer is according to the Statute. Co. Lit. 42. b. 9 H. 6. 7. 11 H. 4. 44. 41 E. 3. 13. 27 E. 3. 22.

If a Man who is not to have any Servant, do retain one to serve him, &c. the Retainer is void.

I He who hath not sufficient Lands of his own to occupy, shall be compelled to serve.

K (d) And a Man may retain one for two or three Years, and it is good.

L And keeping from the Servant Meat and Drink, is a good Cause for his Departure from his Service. 39 E. 3. 22. 6 E. 4. 2.

And so for Battery; or Licence to depart, is a good Cause of Departure.

M The Lord may take his Villain out of the Service of another, (e) if he hath need of Servants, otherwise not. 19 R. 2. 50 E. 3. 22.

If

sity, if the Servant departs first, (where he was never lawfully retained) there an Action does not lie against him who shall afterwards retain him; *contr.* if he be taken with Force, &c. Action lies, tho' he found the Infant Vagrant, and retained him. 38 E. 3. 5. See 12 H. 8. 10, &c.

(a) A Writ does not lie on the Star. for Departure of a Chaplain who is retained to say Mass. 10 H. 6. 8.

(b) See accordant 11 H. 6. 1. but by *Martin, Quare*, if he be retained only for a Day, if he shall defeat the Covenant, supposing the Request to serve is for a Year.

(c) But the Count ought to be special. 11 H. 4. 33.

(d) 29 E. 3. 27. 'Tis doubted if a Re-

teiner for more than a Year, be within the Statute. *Vide infra*.

(e) 29 E. 3. 41. Resolved. (1.) If a Villain be forced by Distress to go to his Lord, he shall be excused against him who retains him. (2.) That tho' the Lord or his Feoffor have not been seised of the Villain for 20 or 30 Years, yet he is not enfranchised, but the Lord may take him. (3.) That the Villain may justify his Departure, *causa qua supra*, by Attorney. See 30 E. 3. 31. They were at Issue, whether the Lord had need of the Service of the Villain; and *Green* doubted if 'twas issuable. See 9 H. 4. 12. the Lord had Occasion for his Service, and took him. See 19 R. 2. Action on the Case 52. for taking his Villain.

If a Woman who is a Servant doth marry, yet it seemeth she ought N  
for to serve (a).

If the Husband and Wife be retained in Service during their Mar- O  
riage, &c. if they depart from their Service, an Action upon the Statute  
lieth against them. 46 E. 3. Bar. 214.

If the Servant be drawn away, the Master may re-apprehend him, P  
and keep him in Spight of him.

If the Master's Wife do beat the Servant, it is good Cause for the Q  
Servant to depart and leave his Service.

Note; A Reteiner by her is not within the Stat. 2 E. 4. 15.

### *Writ de Restitutione temporalium.*

[169.] **T**HE Writ of Restitution of the Temporalities lieth, in case a spiri- A  
tual Person be elected a Bishop, and consecrated, &c. then he shall  
have this Writ unto the Escheator, &c. And so it is of an Abbot or  
Prior, which is of the King's Foundation, and ought to have the King's  
Royal Assent, &c. when he is elected and established Abbot or Prior,  
(b) he ought to sue a Writ to be restored unto the Temporalities; and  
the Form of the Writ for the Prior is such:

*Rex Escheatori suo in Com' Devon' sal'. Cum venerabil' pat' H. Exon'  
Episc' electionem nuper fact' in Eccles. conventuali de P. de dilecto nobis in  
Christ' fatre I. de C. Canonico ejusdem dom' in Prior' loci illius, cui prius  
regium assens. adhibuimus & favorem, confirmaverit, sicut per literas patentes  
ipsius Episcopi nobis inde directas constat: Nos confirmationem illam accep-  
tantes, cepimus fidelitatem ipsius Electi, & temporalia prioratus prædict'  
(prout moris est) restituimus eidem. Et ideo tibi præcipimus, quod eidem  
Electo temporalia prioratus prædict' liberes in forma prædict'.*

And by that Writ appeareth, when a Priory or Abbey is void which B  
is of the King's Foundation, that they ought for to have the King's  
Royal Assent to go to the Election; and after the Election made, the  
Bishop ought to confirm the Election, and to certify the King thereof  
by his Letters, and thereupon the King to take his Fealty; and he to  
grant this Writ to restore the Temporalities.

And there is another Writ when the King granted only his Assent to  
go to the Election, and to make the Prior without any Certificate made  
before of the Election; and the Writ is such:

*Rex*

(a) See *contr. per Cur.* 11 H. 4. 13. that  
it is not lawful to take her during the Es-  
cheator's. 46 E. 3. Bar. 214. 7 R. 2. Tres-  
pass 206.

(b) And sometimes it was by Mandate  
to the Tenants of the Abbey, &c. *quod sint  
intendentes abbati Electo.* Rot. Parl. 1 E. 1.  
M. 20. *pro Abbate de Wells*, and See there  
*pro Episcopo Cant.* Rot. Parl. 2 E. 1. M. 24. *pro*

*Priore de Southwikk*; and see the Charter of  
King John, Mat. Paris 352. *Salva nobis &  
hereditibus nostris Custod. Ecclesiarum & Monaste-  
rior' Vacantium, &c.*— *Et Vide Quæ vacante  
spectant ad Regem.* 31 E. 3. *Ayd de Roy* 103.  
19 E. 2. *Quare Impedit* 178. Rot. Claus. 6 E.  
3. M. 23, viz. not of Churches Appro-  
priate.



Rex, &c. Cum venerabilis pater, &c. dilectum nobis in Christo fratrem C. de D. Canonicum ejusdem domus in Prior' loci illius elect', cui electioni prius regium assensum adhibuimus & favorem, in Priorem ejusdem loci prefecerit & pastorem, sicut per literas patentes ipsius Episc' nobis inde direct' nobis constat, nos prefecionem illam acceptantes, cepimus fidelitatem ipsius prefeciti & temporalia Prioratus præd', &c. ut supra.

C And the Prior so elected and established, may have a Writ out of the Chancery directed unto the Tenants of the Priory, that they do accept him for their Prior and Lord, &c. and that they be Attendants, &c.

D And where the Prior or Abbot ought to have the King's Royal Assent to go to Election, and obtain the same, and afterwards make the Election, and the Bishop doth avoid it, and afterwards they submit unto the Award and Arbitrement of the Ordinary, to name to them one to be Prior, &c. and make him Prior, and certify the King thereof by his Letters, the King thereupon may grant such Writ, viz.

Rex, &c. Cum venerabilis pater I. Wint' Episc' Elect' nuper fact' in Eccles. S. D. juxta S. de dilecto nobis in Christo fratre T. de N. Canonico ejusdem Domus in Priorem loci illius causavit; & virtute submissionis conventus loci præd' sibi fact' de providend' eidem Prioratui de Prior' idoneo illa vice, dilect' nobis in Christo fratrem I. de W. Canonicum ejusdem Prioratus in Priorem loci illius prefecerit & pastorem, sicut per literas patentes ipsius Episc' nobis inde direct' nobis constat, nos cum eodem I. volent' agere gratiose, ceperimus fidelitatem dicti I. & temporal' Prior' illius prout moris est, restitui-  
mus eid'. Et ideo tibi præcip', &c. ut supra.

And by that Writ it appeareth, that the Writ is of the King's special Grace; for the King might lawfully refuse the Establishment of the Prior, because he was not elected according to the King's Licence and Assent to the same, &c. But yet the common Use is, that if they cannot agree in the Election, to submit themselves unto the Award of the Ordinary.

E And there is another Form of Writ where the King grants his Royal Assent to any Chapter to choose the Bishop, and they choose one of the Chapter; and because the Archbishoprick is void, the Guardian of the Spiritualties doth (a) certify that Election unto the King, and his Confirmation upon the same; and upon that the King grants a Writ of Restitution, &c. in such Form:

Rex, &c. Cum dilect' nobis in Christo Prior & Capitulum Eccles. Christi Cant' Custod' spiritualtat' Archiepiscop' Cant' sede vacante, electionem nuper celebrat' in Eccles. Cathedr. movend' de discreto viro magistro H. de H. Archidiacono inducend', & Canonico ejusdem Eccles. in Episc' loci illius, cui prius Regium assensum adhibuimus & favorem, confirm' sicut per Literas patent' ipsorum prioris & capituli nobis inde directas nobis constat, nos confirmationem, &c. ut supra.

E e e

And

(a) See this Certificate by Letters of the Metropolitan, with a special Conclusion, (forbidding any to say) the Contrary. 21 E. 3. 40.

And before the Statute of *Præmunire*, the King might seise the Temporalities of the Bishop, if he came to the same by Provision of the Pope; but now he shall forfeit all his Lands and Goods by the Statute of 16 R. 2.

And it appeareth by the Register, if a Bishoprick of *Ireland* be void, G that they shall sue to the King here in *England* to go to Election of another, and after the Election made, they ought to have his Royal Assent to that Election, upon Certificate of the Election to the King. And thereupon a Writ shall be out of the Chancery here to the Chief Justice of *Ireland*, or his Lieutenant, rehearsing the whole Matter, commanding him to take the Bishop's Fealty; and to restore to him the Temporalities; but now the Course in *Ireland* is to make such Writs there in the King's Name, but the King doth nominate the Bishops there, and also in *England*; and then the Chapter shall choose him whom the King hath nominated unto them; and thereupon the Writs are made of Course.

[170.] But how and in what Manner Archbishops and Bishops shall be elect- A ed, nominated, presented, invested and consecrated unto the Dignity of an Archbishoprick or Bishoprick; see the Statute thereof made 25 H. 8. cap. 2.

And the King may give Power to another, to give his Assent to go B unto the Election, and to certify the same Election unto him again, and thereupon to take the Fealty of the Abbot, Prior or Bishop, and to certify the King thereof in the Chancery. And the Writ of *Dedimus potestatem* shall be such:

*Rex dilecto suo I. de C. Confiabulario suo castri sui de A. B. sal. Compantes paupertati dilectarum nobis in Christo suppriorisse & monialium Priorat' de B. vacantis per mortem bone memorie M. nuper Priorisse loci illius, cui licentiam nuper concessimus eligend', ac volentes ipsarum laboribus & expens. parcere, gratiose dedimus tibi potestatem prebend' assensum regium vice nostra electioni de futura Priorissa in dicta Ecclesia facta seu in proximis faciend'. Et cum electio huiusmodi per literas patentes ipsarum suppriorisse & monialium cum sigillo capituli sui signatas nobis inde directas, tibi fuerit presentata ad huiusmodi assensum loci Diocesano per vestr' literas significand', ut quod suum est ulterius exequatur, necnon ad recipiend' fidelitat' nomine nostro ejusdem Priorisse, si contingat electionem predict' Canonice confirmari, & tibi inde per literas patentes ipsius Diocesani nobis inde directas constiterit, & ideo tibi mandamus, quod circa premissa facias in forma predict', & nos de fidelitate predict', cum illam ceperis sub sigillo vestro distincte & aperte reddas certiores, mittens nobis tam literas ipsarum suppriorisse & monialium, quam literas ipsius Diocesani supradict'. Teste, &c. ut supra.*

And if the Dean and Chapter go to the Election of the Bishop with- C out the King's Assent, and certify the same to the King, the King may choose whether he will assent to the Election or not; and if he will give his Royal Assent to the same, then he shall send a special Writ to some Person to take Fealty of him; and the Writ in the Register is such:



Rex dilecto & fideli suo I. Justic' suo Hibern' salutem. Cum dilecti nobis in Christo Decanus & capitulum Eccles. de B. vacan' nuper Ecclesia sua prædict' per mortem bonæ memor' Lucæ nuper Episc' loci illius dilect' nobis in Christo M. I. Decanum Eccles. prædict' in suum Episcopum elegerunt & pastorem, & nobis per suas patentes literas supplicaverunt, ut Electioni regium assensum adhibere dignaremur: Nos licet idem Decanus & Capitulum prius a nobis Eligend' licent' non postulaverint, ut est moris, volentes tamen eis hac vice grac' facere specialem, eidem Electioni Regium assensum duxerimus adhibend'; Nolentes, quod quamvis ipsi hujusmodi licentiam minime postulaver' molestentur in aliquo seu graventur: Volentes insuper eid' Electo ut ipsius precat' laboribus & expens. grac' fac' uberiores, Vobis dedimus potestatem, quod si contingat Election' hujusmodi per loci metropolitan' Canonic' confirmari, & vobis inde per literas patent' loci ipsius Metropolitan' nobis inde direct' constiterit, tunc fidelitat' ipsius Electi nobis debitam in hac parte nostro nomine recipiatis, & ei temporalia Episcopatus illius prout moris est restit' faciatis vice nostra, receptis prius ab Episcopo Elect' literis suis factis sigillo suo, &c. & sigillo capit' sui signatis, quod gratia nostra, quam eidem Electo ad præsent' ex mera liberalitate nostra fecimus, nobis vel hæredibus nostris non cedat, &c. Teste, &c.

### License to go to Election.

**D** THE Form of the King's License to go to Election is thus (a):

Rex dilectis sibi in Christo Priori & Conventui Monaster' de Burg' S. Petri salut'. Ex parte vestra nobis est humilit' supplicatum, ut cum Ecclesia vestra prædict' per mort' bon' memoriæ W. ultimi Abbatis loci illius pastoris sit solatio destituta, alium vobis eligendi in Abbatem & Pastorem ejusdem domus licentiam vobis concedere dignaremur, nos precibus vestris in hac parte favorabiliter inclinati, licentiam illam vobis tenore præsen' duximus concedend', mandantes quod talem vobis eligatis in Abbatem & Pastorem, qui Deo devotus, Eccles. vestr' præd' necessarius, nobisque & Regno nostro utilis & fidelis existat. In cujus rei, &c.

**E** And when they have made their Election, they ought to sue a Writ to have the King's Royal Assent to that Election, and that Assent shall be made by Writ, directed to the Bishop of the Diocese, and shall be such:

Rex venerabili in Christo Patri P. eadem gratia Episc' Linc' salut'. Scitis quod Electioni nuper fact' in Eccles. conventuali Monasterii de B. vestræ Diœces. vacan' per mortem bonæ memor' W. ultim' Abbatis loci illius de M. supprior' ejusdem domus vel de fratre B. Monacho ejusdem domus in Abbatem loci illius Regium assensum adhibuimus & favorem, & hoc vobis tenore præsen' significamus, ut quod vestrum est in hac parte exequamini.

E e e 2

(a) And

(a) See Rot. Pat. 1 E. 1. M. 4. Electio Abbatem loci Diœcesan'. And note; this was cassata eo quod Licentia Regis non fuit requisita, in Ireland.  
& de concilio Regis Episcopus Dunelm' præfecit

(a) And the Abbot, when he is made Abbot, may sue Letters Patent, F directed to his Tenant, reciting how he is made Abbot, and how the King hath restored to him the Temporalities, commanding them that they be attendant upon him as their Lord.

### Writ of Decies tantum.

[171.] **T**HE Writ of *Decies tantum* lieth where any of the Jury who is A sworn, taketh of the one Party, or of the other, or of both, to give their Verdict, &c. Then he who will may sue this Writ, for it is an Action popular. And the Writ of *Decies tantum* lieth against all the Jurors, although they severally take Sums of Money, as some more, some less.

21 H. 6. 52.  
5 E. 4. 2.  
Therefore  
the Release  
of the Party  
is not good  
against the  
King. 40 E. 3. 33. 44 E. 3. 36. 36 H. 6. pl. 1. and fol. 28.

Co. Lit. 369. a. And *Decies tantum* lieth against an Embraceor, if he take Money, as  
17 E. 4. 5. well as against a Juror, otherwise not.  
One Juror  
may pray  
his Companions to pass with the one, or the other, because he is persuaded in Conscience with him.

Co. Lit. 369. a. (b) And an Embraceor is he who cometh to the Bar with the Party, B  
6 E. 4. 5. and talketh in the Cause, or standeth there to Survey the Jury, or to  
13 H. 4. 16. put them in Fear; but the Lawyers may plead in the Cause for their  
ac. for Attornies Fees, but they cannot labour the Jury, and if they take Monies so to  
do, they are Embraceors.

37 H. 6. 31. And the *Decies tantum* doth not lie against the Embraceor, if he em- C  
ac. per Cur. brace and take no Money; for he ought to take Money, and also em-  
22 H. 6. 5. brace, if the Action be maintained.  
27 H. 6. 3.

21 H. 6. 20. And *Decies tantum* lieth against the Jurors, altho' they do not give a  
1 Ma. Dyer Verdict, if they take Money; and so if they give a true Verdict, a  
95. *Decies tantum* lieth if they take Money.

29 H. 6. 54. And a *Decies tantum* may be sued against the Jurors and Embraceors, D  
41 E. 3. 5. and it may be sued against the Justices of *Nisi Prius* by Bill, and it  
40 E. 3. 33. may be adjourned from them in *Banco*. And the Form of the Writ is E  
41 E. 3. 9. such :

Rex *Just' suis de Banco salut'.* Cum in Statuto nostro apud W. anno regni nostri v. edit' inter alia ordinat' sit & statut' quod si aliquis jurator in ass. jurat' vel inquisit' capiat de una parte vel de alia, & super hoc debet convinci, quod extunc non ponat' in ass. juratis, nec inquisit', & nihilom' committat'

(a) Note; The King may at this Day create a Bishop *per annulu' & Baculu'*, or by Letters Patent. Mich. 13 Jac. 1. B. R. Rot. 155, or 151. adjudged.

(b) If an Attorney promises or gives any Thing to the Jury, it is Maintenance and punishable; but a *Decies tantum* does not lie against the Jurors for such Taking. 13 H. 4. 15.



mittat' prison, & ulterius redimat' ad voluntat' nostr', ac S. & W. nuper in quadam inquisit' inter A. petent' & R. tenent' de uno mesuag' cum pertin' in N. coram vobis in banco prædict' capiend' positi, tam de prædict' A. quam de præfat' R. contra formam Statuti prædict' (a) ceper' ut accipim': Nos statut' illud inviolabiliter volent' observari, vobis mandamus, quod vocatis coram vobis præf. W. & S. si vobis constar' poterit ipsos in inquisit' prædict' positos fuisse, & tam de prædict' A. quam de præfat' R. cepisse, ut prædict' est, tunc inspecto Statuto prædict' ulterius inde faciatis quod de jure & secundum formam Statuti prædict' fuerit faciend'. Teste, &c.

Certain Jurors took Money of the Party after their Verdict without any Covenant made before, viz. each a Mark, and were thereof convicted by

Verdict, and fined each a Mark; so note that is out of the Statute, and there was no committing him to Prison, 39 Aff. 19 Brion. Decies tantum, 15. 8 H. 6. 9, & 10. Not guilty is no Plea in Decies tantum: But he ought to say that he took no Money. 6 E. 4. 5. For in a Writ of Maintenance he must say he did not maintain.

**F** And upon this Writ the Justices shall make Process for the King against the Party, which Writ shall be a *Pone* (as seems) to attach him to appear, and to answer the King for the same; and there is another Form of Writ for the Party thus:

**G** Rex Vic', &c. Si W. H. fecerit, &c. tunc pone, &c. I. S. I. F. & W. 38 Aff. 9.

K. &c. quod sint coram nobis a die S. Michael' in tres septimanas ubicunque tunc fuerimus in Angl' ad resp' tam nobis quam præf. W. H. quare cum in Parliament' Domin' Ed' nuper Regis Angliæ, &c. apud Westm' anno regni sui tricesimo octavo tento, inter alia concordatum existat, quod si aliqui juratores in Assisis, juratis & aliis inquisitionibus capiend' inter nos & partem, vel partem & partem, quicquam capiant per ipsos vel per alios de parte conquerentis vel defendentis pro veredicto suo dicendo, & super hoc per processum in quodam articulo de Juratoribus anno regni ejusdem avi nostri tricesimo quarto facto ordinat' convincat', sive sit ad sectam partis quæ pro seips. vel pro nobis, aut alterius cujuscunque personæ prosequi voluerit, solvat quilibet juratorum prædict' decies tantum quantum ipse recepit, & habeat ille qui faciat sectam, unam medietat' & nos aliam medietatem. Et quod omnes imbraciat' ducend' vel procurand' tales inquisit' in patria pro lucro vel proficuo capiend' puniantur eodem modo & forma sicut juratores, & si jurator vel imbraciator ita convictus non habeat unde in forma prædict' satisfaciatur, habeat prisonam unius anni, prout in ordinatione illa plenius continet', prædict' I. S. I. F. & W. K. juratores in quadam inquisit' quæ nuper sum' fuit & capta coram Justic' Domin' Ric' nuper Regis Angliæ secundi post conquestum, de banco apud Westm' per breve ipsius nuper Regis de record' inter R. F. & prædict' W. H. de averiis ipsius R. captis & injuste detentis ut dic' positi, pro veredict' suo in hac parte dicend' ac præf. W. D. de L. I. imbraciat' ejusdem jurat' ad eam ducend' & procurand' de præf. R. divers. pecuniar' sum' & alia dona apud villam Westm' ceperunt, in nostri contemptum, & ipsius H. grave damnum, & contra formam ordinationis prædict', & habeas ibi nomina plegiorum, & hoc breve. An Ambidexer is that Juror or Embraceor, who taketh of one Part and the other, to restore ten Times as much, &c. See Statute of 27 E. 3. c. 3. 33 E. 3. c. 8. 38 E. 3. c. 12.

21 H. 6. 54. Exception was taken for Want of the Words (grave damnum, &c.) and disallowed, being a popular Action. 41 E. 3. Deciestantum 12

Writ

(a) Ad grave damnum & nostri contemptum, Plaintiff, because it is an Action popular: without saying ad grave dampnum of the 21 H. 6. 54. vide infra H.

## Writ of Champerty.

[172.] **T**HE Writ of Champerty lieth, where a Man by Covenant or A- A  
greement made by Writings or by Word, agreeth to have Parcel  
47 E. 3. 9. of the Thing or Land, or Debt which is in Suit, that shall be recovered,  
if he do recover, to maintain and aid him in the Action, and in the  
Manner for which he sueth. (a) Then he who is grieved shall have  
this Action against him who maintaineth the Suit for the same Intent;  
and the Writ is such:

*Rex Justic' suis de banco salutem. Cum inter ceteros articulos quos Dom' E. nuper Rex Angliæ, &c. ad emendat' status populi regni sui concess. ordinat' sit, quod nullus minist' suus, nec aliquis alius pro parte rei quæ est in placito habenda, negotia quæ sunt in placit' sibi assumat manutenend', nec aliquis jus suum sub hujusm' convent' alteri dimittat; ac L. placit' loquelæ quæ est coram vobis per breve nostrum inter A. petent' & B. tenent' de uno mesuag' cum pertinent' in I. pro parte ejusdem habend' jam (b) assumpserit manutenend' contra form' ordinat' prædict' ut accepimus: Nos ordinat' illam volent' inviolabil' observ' vobis mandam' quod inspecto tenor' ordinat' prædict' ulterius inde fieri fac' quod de jure & secund' form' ordinat' præd' fuerit faciend'. Teste, &c.*

(c) And upon that the Justices shall award an Attachment against B  
the Party out of the Common Pleas, &c. returnable at a certain Day.

And this Suit shall be said the King's Suit; but yet the Party may sue C  
an original Writ out of the Chancery against him who purchaseth Parcel  
of the Land depending the Plea, &c. And the Statute which giveth  
the Action, is the Statute of *Articuli super Chartas, cap. 11.* (d) which  
willeth that no Minister or other for Part of the Things which are in  
Plea, take upon him any Matter which is in Suit; nor none upon any  
such Covenant shall give up his Right; and if any do so, and be at-  
tainted thereof, then shall be forfeit unto the King so much of his  
Lands and Goods of the Taker, as doth amount unto the Value of the  
Part he hath purchased by such Taking upon him.

30 Aff. 5.  
Br. Cham-  
perty 7.

And by those Words it seemeth that he, who loseth his Land pendant  
the Suit, or giveth Parcel thereof pendant the Plea, to the Intent afore-  
said, shall be punished as well as he who is the Purchasor. 30 Aff. 15.  
*cont. F. Champarty 5. cont.*

Br. Champ.  
7. Fitz. 11.

Anno 30 E. 3. *Lib. Aff.* It is no Plea to say he did not purchase pen- D  
dant the Plea; by which it seemeth if he purchase before the Writ sued  
to

(a) See 12 E. 3. *Champerty* 9. Where the  
King sued a Writ of Champerty, &c.

(b) Without alledging that the Party  
had maintained in the Writ, for that the  
Writ is *ad dampnum*; *Note*, The Justices  
may amend a Writ directed to them, but  
not a Writ directed to the Sheriff. 22 H. 6. 7.

(c) *Note*; Process of Outlawry is in  
Maintenance, but not in a Writ of Con-  
spiracy. 22 H. 6. 7.

(d) See 20 H. 6. 30. It is doubted if the  
Writ lies in this Case; for it is not war-  
ranted by any Statute.



to maintain, &c. that he shall be punished, &c. by the Statute; *tamen* *quere.* For 19 R. 2. *Champerty* 15. it is holden by all the Court, that if a Man bargain for any Lands by Deed, and afterwards an Action is brought for the same Land, and afterwards pendant the Plea he maketh Estate to him, to whom he made the Bargain, that it is not Champerty.

Fitz. Cham.  
15.  
9 H. 7. 18. ac.  
Plow. Com.  
465. ac.

E And a Surrender made by him in the Reversion pendant the Plea is not Champerty.

17 E. 2.  
Champ. 14.  
50 Aff. 3. Br.  
Champ. 8.  
22 E. 3. 10.  
Br. Cham. 4.

F And if a Man purchase Land *bona fide* pendant the Writ, and not to maintain, it is not Champerty. 21 E. 3. 10, 52. 50 Aff. 3. 17 E. 2. *Champerty* 6, 14.

G And a Disseisor in an Assise shall have a Writ of Champerty, if the Disseisee grant Part of the Land by Covenant to maintain, &c. 32 E. 3. *Champerty* 6. *cont.* 14 H. 6. 7. 1 Inst. 21. 4 E. 3. *Champerty*. 7 E. 4. 12. *Litt.* 4. *cont.* 6 E. 3. 33. *Nat. Br.* 180.

47. E. 3. 9.  
6 E. 3. 3. Fitz.  
Champ. 10.

H And a Man may give to his Son in Frank-marriage, or for Life, and it shall not be said Champerty, for the Statute in the End thereof is in such Manner. But that is not to be intended, that a Man may not give Counsel Fees for their Pleading. *Dyer* 301. 274. *Bro. Champerty per tot.* 17 E. 2. *Champerty* 14. *Nat. Br.* 180. B.

I And in a Writ of Champerty, 17 E. 2. where the Writ did abate for false *Latin*; the Defendant was put to answer the King's Suit for the same Matter.

K And if a Man grant a Rent out of the Land, pendant the Suit for the Land, the same is Champerty, although that that Rent is not as a Demand, &c.

L And Champerty lieth as well upon Covenant made by Word, &c. as if it were made in Writing to have Parcel of the Thing, &c.

Ant. 171.  
30 Aff. 15.

M And if the Covenant be to have a Rent out of the Land of another which is not in Suit, it is not Champerty. But if he do maintain, &c. he shall have a Writ of Maintenance against him for the same, but not a Writ of Champerty.

N And if the Officers of the Court do maintain any Plea pleaded in their Court to have Part of the same, or other Profit by the Recovery in that Action, the Party grieved shall have such a Writ:

*Rex Vic', &c. Si R. & M. uxor ejus fecer', &c. tunc pone, &c. I. & W. ball' civitat' nostræ Winton' W. & W. quod sint coram Justic', &c. ostens'. quare cum de Communi concil' regni nostri provisum sit, quod nullus minister noster vel aliquis alius manuteneat placita, querel' vel (a) negotia, quæ sunt in curiis nostris, vel alibi de terris & tenementis, aut aliis rebus quibuscunque pro parte rei petit' vel alio proficuo, per conveni' fact' inde habend',*  
*nec*

(a) Note; If one gives Money to another to purchase an Appeal, this is not Maintenance; *contra* 1 R. 2. c. 4. if he gives it after the Appeal purchased, *per* Markham. 3 H. 6. 34. and one cannot maintain another, except there be some Relation between them; and therefore in such Case the Grantor or the Grantee may

shew and produce Evidences, &c. where the Grantee is impleaded, though no Voucher or Warranty of Charters be sued against him: So a Servant or Cousin to the Tenant may maintain generally. 11 H. 6. 41. and in an Appeal by a Servant the Master may retain Counsel, pay Fees, &c. with his own proper Goods, &c. and so may

*nec aliquis jus suum sub hujusmodi convent' alteri dimittat, præd' I. & W. W. & W. quoddam placit' frescæ forc' quod est coram Major' & dict' ball' civitat' prædict' inter S. & A. uxor' ejus petent' & præf. R. & M. tenentes de uno mes. cum pertin' in civitat' præd' pro parte tenementi prædict' & alio proficuo inde habend' per convention' jam assumpserint pro præf. S. & A. manutenendis & manutinent, ad (a) grave damnum ipsorum R. & M. & contra formam Stat' prædict' & habeas, &c.*

*Writ upon the Statute, That none be Victualler for the Time that he is Mayor, or Sheriff, or Head-Officer of a Town or Borough.*

[173.] **N**OTE, That by the Statute of *York*, no Victualler shall use the Occupation, to sell Victual or Wine in Gros or by Retail, so long as he is in Office in any Town, Borough or City, to keep the Assise of Bread and Wine, upon Forfeiture, &c. If a Man who is a Victualler be chosen to be Mayor, Sheriff, or other Officer of a Town, Borough or City, who by Reason of his Office is to keep the Assise; by the Statute of 3 H. 8. cap. 8. it is ordained, 'That two discreet Persons of the same Town, &c. who are not Victuallers, be chosen and sworn to assise the Assise of Bread, Wine, and Victual, during the Time that he is in his Office, and then, after the Price assessed of Wine and Victual, for the Time, it shall be lawful for him who is chosen Mayor or Sheriff, to sell Wine and Victual for the Time that he is Officer. But that A Statute doth not extend to *London*, *York*, or *Coventry*, to sell or retail Wine or Victual, but in Gros they may. And by the Statute of 6 R. 2. cap. 9. That Victuallers be not chosen to the Office of Judge in Towns or Cities, but for Want of others, then he shall not sell Victuals upon a Pain of Forfeiture.

But it appeareth by the Statute of 3 H. 8. what Things he may do.

And if any Man in *London*, *York*, or *Coventry*, or other Place, offend B against those Statutes, then he who is grieved may sue a Writ directed to the Justices of Assise, commanding them to send for the Parties, and to do Right, &c. Or the Party grieved may have an Attachment against the Officer, Mayor, Sheriff or Bailiff, who offend contrary to the Statute, to appear before the Justices in the King's Bench, or before the King

may the Son for the Father: So Giving of Money, &c. to a poor Man by Way of Alms, &c. is no Maintenance; yet to stand with a Stranger at the Bar is Maintenance. 21 H. 6. 16. So it is for a Stranger to shew to the Jury the Truth of the Matter, or to say that he will spend 20 s. for J. S. though he does not give any Money to la-

bour the Jury; yet it is Maintenance, though he does not labour the Jury. See 22 H. 6. 5.

(a) Note; If he shews any Maintenance, it shall be said to be Maintenance pending the whole Plea, although it be only a transient Act. 22 H. 6. 6. per Cur'.



King in the Common Pleas, to answer the Matter. And the Form of the Writ unto the Justices of Assise is such :

*Rex dilect' & fidelibus suis A. & B. Justic' ad assisas in com' tali capiend' assign' salutem. Cum ad communem utilitatem populi regni nostri statutum sit, quod nullus minister in civitatibus, nec in burgis, qui ratione officii sui debent custodire Ass. de vinis, seu de victualib' dum sit intendens hujusmodi officio, merchandizet de vinis nec de victualibus in grosso nec ad retalliam. At jam R. de B. nobis dederit intelligi, quod S. & M. ballivi villæ prædict' & quidam alii ballivi in dicta villa de S. existant, qui ratione officii sui hujusmodi Assisam custodire debent in eadem villa, vina & victualia in grosso & ad retalliam vendunt, contra formam Statuti prædict' : Nos, si ita sit, remedium in hac parte apponi volentes, Vobis mandamus, quod audita inde querela prædict' R. & vocatis partibus coram vobis, earumque rationibus hinc inde auditis, & inspecto tenore Statuti prædict' eidem R. tam pro nobis quam pro seipso super hoc debitam justitiam fieri faciat', prout secundum Statutum prædict' foret faciend'. Teste, &c.*

And if the Action be brought upon the Statute of York, then he who sueth the Action shall have the third Part, and the King shall have the Residue of the Victuals which is forfeited. And also the Form of the Writ of Attachment is such :

*Rex Vic' Ebor' salutem. Pone, &c. P. de T. de Richmond' nuper ball' vill' Richmond' quod sit coram nobis, &c. ostens. quare cum ad communem utilitatem regni nostri Angliæ de communi concilio ejusdem regni concordat' sit, quod nullus minister, &c. ad retalliam sub forisfactura eorundem; prædict' P. dum ball' dictæ villæ de Richmond' extitit, de vinis & aliis victualibus diversis ad valenciam centum librarum in prædict' villa Richmond' tam in grosso quam in retallia pluries merchandizavit, & ea ibidem vendidit, ut dicitur, in nostri contemptum manifestum, & dicti populi nostri grave damnum, ac contra formam ordinationis supradict' & habeas, &c. Teste, &c.*

*Writ upon the Statute of Articuli Cleri, that he do not distrain in the Glebe of Parsons; nor in the King's Highway.*

**T**HE Writ that no Distress be taken in the Glebe Land of the Parson by the Sheriff or other Officer is grounded upon the Statute of *Articuli Cleri*, cap. 6. By which Statute it appeareth that the Sheriff nor other Officer, shall (a) not distrain in the King's Highway, nor

F f f

in

(a) See where a Bailly by Warranty on a Commission out of the Exchequer to levy a Sum certain on the Dean and Chapter of C. on a Tax granted to the King, distrained in Parcel of the Parsonage of the Church of K. which was a Sanctuary, and

the Dean and Chapter brought a general Writ of Trespass; and for that he took it by Virtue of a Commission and Grant, tho' nothing had been due; yet he shall not be said to come *vi & armis & contra p. em*; and therefore the Plaintiff ought to have aided

in the Glebes of antient Times given to Rectories, and if any Sheriff or other Person do contrary, then he who is distrained may sue this Writ.

Sec *Marlb.*

cap. 55.

Vi. 17 E. 5.

43. Fitz. Ref-

cous 14. the

Party may

Reiscous.

And if a Lay-person be distrained in the King's Highway, &c. he shall have an Action upon the Statute of *Marlebridge*. But a spiritual Person shall have his Action upon this Statute. But by the Statute of *Marlebridge* the King's Officers may distrain in the Highway. And after the Writ delivered to the Sheriff, if he be distrained again, he shall have an *Alias* and *Pluries*, and thereupon an Attachment. And this Writ is in it self a Prohibition to the Sheriff; and the Writ is such:

*Rex Vic', sal'. Cum in Articulis Prælatorum & Cleri Regni nostri per Dom' Edw' nuper regem Angl' avum nostrum, de assensu procerum & magnatum regni nostri concess. contineatur, quod districtiones non fiant super Rectores per Vic' aut alios ministros nostros in via regia, aut in feodis quibus olim Eccles. sint dota', ac jam ex gravi querela dilecti nobis in Christo Abbatis de Valle regali personæ Eccles. de K. intellexerimus, quod tu colore officii tui terras & tenementa quæ sunt de dote & feodo ejusdem Eccles. apud K. nuper ingressus fuisti, & præfatum Abbatem in terris & tenementis prædict' graviter distrinxisti, & inde distringere non desistis, in ipsius Abbatis præjudicium & libertatis Ecclesiasticæ lesionem manifestam, & contra formam articulorum prædict': Nos libertates Ecclesiasticas illæsas observare volentes, Tibi præcipimus, quod districtiones aliquas in terris & tenementis quæ sunt de dote prædict' Eccles. nullatenus facias, nec quicquam quod in libertatis Ecclesiasticæ lesionem aut enervationem articulorum prædict' cedere valeat attemptetis, & districtionem, si quam præfat' Abbati in feod' Eccles. suæ præd' ut præd' est, feceris, sine dilatione relaxes eidem. Teste, &c.*

[174.]

And it seemeth, That the Party who is distrained in the King's Highway, or the Parson in the Glebe of his Church, shall have an Attachment against the Sheriff, or other who distrained, although they never sued out before this Writ of Prohibition to the Sheriff; because that the Statute is a Prohibition it self to the Sheriff, &c.

And by the Statute of *Articuli super Chartas*, cap. 12. The Sheriff ought not to make excessive Distress for the King's Debt, nor distrain the Plough-Cattle, if he can find others. And if the Party will find Sureties to the Sheriff to pay the King's Debt before the Day of the Return of the Writ, the Sheriff ought to deliver back the Cattle. And if the Sheriff do otherwise than is expressed in the said Statute, the Party upon that Statute shall have Attachment against him, or he may sue forth a Writ to inhibit the Sheriff that he do not distrain contrary to the Form of the Statute; and the Writ is such:

*Rex*

aided himself by a special Writ, or at least by a Replevin; and the Plaintiff took nothing by his Writ. 26 E. 3. 70. and so note the Liberty of the Church is not exempted from temporal Jurisdiction. See in the like Case, where in *Trespas contra pacem*, for distraining in a Sanctuary, the Defendant justifies as the King's Bailly, for Issues

lost by the Prior, and that a Precept from Sheriff came to the Plaintiff, commanding him to levy it, &c. and that he entred, &c. for that he could not find any Distress elsewhere, &c. and the Writ was abated for that Cause, i. e. it not being *contra pacem*. 28 E. 3. 97.



*Rex Vic' Derb' salutem. Cum inter cæteros articul' quos celebris memoria Dom' Edw' quondam Rex Angl' avus noster, ad emendat' status populi regni sui ordinavit, contineatur, quod nimis graves district' non capiantur pro debitis nostris. Et si debitor possit invenire sufficient' securitat' pro debit' ill' usque ad unum diem infra diem Vic' quod district' hujusmodi interim relaxetur: Tibi præcipimus quod si I. de W. invener' tibi sufficient' securitat' de responsa nobis ad proxim' proferum tuum de centum solid' per quos finem fec' nobis coram Justic' nostris de banco pro licenc' concord' in uno brevi de conventionem, & quos ab ipso per sum' Scaccar' nostri exiges, ut dic', tunc districtioni quam eidem W. facis occasione prædict' interim supersed' per securitatem supradictam & habeas ibi hoc breve. Teste, &c.*

And there is another Form of Writ in such Case, thus:

*Rex Vic', &c. quod nimis gravis districtio non capiatur pro debito nostro, nec nimis remot' ducatur. Et si debitor invenire possit sufficient' & competent' securitat' de debito illo usque ad unum diem infra diem Vic' infra quem debitor sibi inde remedium acquirere valeat, vel alias de debito illo satisfac', quod district' hujusmodi interim relaxetur: Tibi præcipimus quod si I. de T. quem pro octo solid' nobis solvend' de exitibus suis coram nobis, & alibi coram Justic' nostris forisfact' virtute sum' Scaccarii nostri tibi direct' distringis, ut dic', invenerit tibi sufficient' securitat' juxta formam articulorum prædict' pro debito prædict' usque ad unum diem infra diem tuum, ad quem tu teneris inde computar', tunc districtionem, si quam eidem I. occasione præmiss' fieri feceris, interim relaxes eidem pro securitate supradicta. Teste, &c.*

*Writ for to seise the Land of the Wife which she holdeth in Dower, who marrieth her self without License.*

**C**NOTE, That if the Tenant holdeth of the King *in Capite* and dieth, &c. his Wife ought not to marry her self again without the License of the King; and if she doth, then the King may seise those Lands which she holdeth in Dower, until she have paid a Fine to the King, which is commonly one Year's Value of the Land which she holdeth in Dower; and that is by the Statute of *Prærog. Regis, c. 3.* But it appears by the Register, that the King ought to seise as well the Land of the Husband, as the Land of the Wife which she holdeth in Dower.

And by the same Reason, if the Wife have other Lands of her own Inheritance, besides the Land which she holdeth in Dower; that the King may seise that Land also; and the Writ in the Register for to seise the Land, is' such:

*Rex Eschaetori suo, &c. Quia Margarita, quæ fuit uxor Edmundi Barron' Staff. defuncti, qui de nobis tenuit in Capite, se sine Licentia nostra aut dilecti & fidelis nostri Radulphi Basset, cui id quod ad nos pertinuit de maritagio prædict' concessimus, Thomæ de P. maritavit, sicut ex querela ipsius*

See after,  
263, 264, 265.  
Stamford 9.  
19. It is not  
Law.

Radulphi accepimus; Vobis mandamus quod si ita est, tunc omnes terras & tenementa, tam ipsius Thomæ quam prædicti M. in balliva vestra sine dilatione cap' in manum nostram, & ea salvo custodir' fac' donec aliud a nobis inde habueritis in mandatis. Teste, &c. per cons.

But now by the Statute of 23 H. 8. cap. 46. the Composition is given to the Master of the Wards with three of the Counsel of

that Court: So they may tax a reasonable Fine at their Discretion, according to the Statute of *Prærogativa Regis*. *Stamford* 19. acc.

[175.] And it appeareth by the Register, That the said *Thomas P.* may agree with the said *Ralph Bassett*, for which the King shall receive his Seisure; as appeareth, *Rotulo Clerum Anno 8 E. 2.* But yet I conceive, that the King ought to seise but only the Lands which the Woman holdeth in Dower, because the Statute giveth no more but that he shall seise that which she holdeth in Dower; for if she will not claim nor sue for Dower, it seemeth she shall not be fined, nor none of her Land seised: And also I conceive, that the King cannot grant the Marriage of his Widows as he may do of his Wards; for if she will live single and not marry, she may so do, and shall not pay any Fine. *Ideo Quære.*

Bro. Fines 63. cont.

If she gets Dower at the Hands of the Heir, or of the Committee with-

out Oath, *Quære*, whether she may marry without License. *Stamford* 19. No, because presently upon the Assignment she is a Tenant to the King, and not to the Heir.

*Stamford Prærog.* 18. 40 *Ass.* 36. The King's Widow had Dower without Assignment. *Vid. Stamford* 18. 35 *Il.* 6. 52.

### *Writ upon the Statute de Anno Primo E. 3. c. 12 & 13. Where the King's Tenant alieneth without License.*

Bro. Tenure 34, 45 E. 3. 6.

**N**OTE, where the King's Tenant who holdeth of the King in chief, as of his Crown, alieneth the Land which he so holdeth of him (a) for Life, or in Tail, or in Fee, without the King's License, then the King ought for to seise the Land for a Fine, &c. But if a Man holdeth of the King, as of any Honour, or Castle, or Manor being in his Hands, which he hath by Descent from any collateral Ancestor, and the Tenant doth alien, as above, his Lands without License granted him by the King: Then if the Sheriff or Escheator will distrain or disturb the Possession

(a) See *contra* 24 E. 3. 71. but 45 E. 3. Alienation for Life or in Tail, a *Contra formam collationis* does not lie.



Possession of the Alienee, he shall have a Writ upon the Statute of 1 E. 3. cap. 13. which shall be such:

*Rex Eschaetor' suo ultra Trent' vel Eschaetori suo in Com' S. salutem. Cum de communi concilio regni nostri statutum sit, Ne quis occasione acquisitionis terrarum seu tenementorum, quæ de nobis ut de honoribus tenentur in Capite, licent' progenitorum nostrorum quondam Regum Angliæ, seu nostra super hoc non obtenta fac' occasionentur, Vobis mandamus, quod R. filium I. de C. Capellanum occasione acquisition' quam tempore Domini Edwardi nuper Reg. Angliæ, fec' Roberto de Samby Milit' de una bovat' terr' cum pert'n' in E. quæ de nobis ut de honore de T. tenet in Capite ut dic', si de nobis sic teneant non occasionetis contra formam statut' supradict'. Teste, &c.*

Bro. Tenure  
33.

And upon that he shall sue an *Alias* and *Pluries*, *vel causam nobis significes*, &c. And thereupon an Attachment against the Escheator or Sheriff, if they distrain or disturb him after that Writ directed unto them, if the Lands be holden as above is said. But it appeareth by that Writ, that a Man may hold of the King *in Capite*, as of an Honour, but the same is against the Register in the Beginning of the Register; as appeareth by the *Præcipe in Capite*: But the Use at this Day is to take a Fine of him who holdeth of the King of any Honour, which is the ancient Inheritance of the King, who alieneth his Land without License: But *Quære* what in Right ought to be done in that Case.

Bro. Tenure  
32.  
Stamf. 29.

## *Writ quod Clerici non eligantur in Officio Ballivi, &c. pro terris suis.*

**I**F a Man, who holdeth certain Lands or Tenements, by Reason of his said Lands ought to be chosen Bailiff, or Beadle, or Reeve, or in such like Office for his Lands; if such a Man be made a Clerk, or is within Holy Orders, then he ought not to be chosen into such Office for his Lands. And if he be elected to such Office of Bailiff or Beadle, &c. he shall have a Writ to discharge him; which shall be such:

*Rex Ballivis I. de L. salutem. Cum secundum legem & consuetudinem regni nostri Angliæ Clerici infra sacros ordines constituti, ad officium Ballivi seu Bedelli eligi non debeant, nec hactenus consuever', ac jam ex parte T. de M. Magistri Hospitalis nostri de C. capellani acceperimus, quod vos ipsum Magistrum ad Officium Ballivi seu Bedelli manerii prædict' eligistis jam de novo, & ipsum Officium illud assumere compellere nitimini, in ipsius Magistri grave damnum, & contra legem & consuetudinem supradictam; super quo nobis supplicavit sibi per nos de remedio provideri; & quia non est juri consonum, quod dictus Magister, qui nobis in Hospitali prædicto pro salubri statu nostro, & pro animabus progenitorum nostrorum quondam Regum Angliæ, & pro statu ejusdem Hospitalis ac Cantariis, Eleemosynis, & aliis piis operibus in eodem Hospitali manutenendum & sustentandum continue deservit ad desistendum alibi extra idem Hospital' in secularibus negotiis compellat'; Vobis præcipimus quod districtioni & compulsioni, si quas eidem Magistro ad Officium Ballivi*

[176.] *Ballivi seu Bedelli in Manerio prædicto assumend' feceritis, omnino superse-  
deatis, & eas sine dilatione relaxetis, & denarios, si quos per amerciamenta,  
vel alio modo ex causa prædicta ab eo levaveritis, eidem Magistro restitui fac'  
indilat' sub periculo quod incumbit. Teste, &c. And he may have an Alias  
and a Pluries, and Attachment upon the same.*

*Writ that Parsons, nor Prebendaries should not be charged  
for their Goods in their Possessions to Fifteenths, which  
are annexed to their Prebends.*

Bro. Quind'. **T**HE (a) Writ for Prebendaries, or other spiritual Persons to be dis- **A**  
charged for their Goods of the Benefice in their Possessions lieth, **184.**  
where the Sheriff or Collectors of the Fifteenths will distrain the Par-  
sons or Prebendaries in their Spiritual Possessions by their Goods being  
in their Possessions, to be Contributories to the Payment of Taxes or  
Fifteenths granted, &c. And if they be distrained, they shall have such  
Writ:

*Rex taxatoribus decimæ & xv. nobis ultimo per communitatem regni nostri  
Angliæ concessarum in Com' Glocestr' salutem. Ex parte W. Præbendarii  
Præbendæ de B. in Eccles. de S. nobis est ostens. quod cum vos occasione x. &  
xv. prædictar' nobis per laicos concessar' in propriis bonis ipsius W. de tempo-  
ralibus Præbend' suæ præd' annexis exeuntibus, quæ ad decimam inter spi-  
ritualia in singulis taxationibus, præstationibus, hujusmodi decimæ taxantur,  
& de quibus decimis dari consuevit prædictam decimam, & quindecimam inter  
laicos assidere, taxar' & levare intenditis minus juste, in ipsius W. damnum  
non modicum & gravamen. Et quia nolumus quod idem W. de hujusmodi  
bonis suis, de quibus decimam nobis dat inter spiritualia de prædict' decimæ  
& quindecima per laicos concess. oneret'; Vobis mandamus, quod ipsum W.  
in propriis bonis suis, quæ inter spiritualia ad decimam taxantur, & de quibus  
decimam nobis dat, ut prædictum est, ratione decimæ & quindecimæ prædict'  
nobis*

(a) See a Writ in the Register 181. that charges those who are Tenants in antient Demesne, and those who are Burgeses, with Tenths, and other Towns only with Fifteenths, except the Grant were special. Rot. Parl. 20 E. 3. Nu. 24. Note; If A. leases to B. Lands for Years which lie in C. and D. B. sows the Land in C. and after a Fifteenth is granted, and B. severs and inns the Corn; and D. having Beasts commoning in D. which are levant and couchant in C. (1.) If B. be taxed to the Fifteenth by his Goods, &c. this shall discharge A. so that he shall not pay the Fifteenth for the Rent. 7 H. 4. 33. (2.) If the Corn is severed and inned at D. after the Fifteenth granted, if it be before

the Tax thereof, and he is taxed for those Goods after the Inning of them, the Tax is void, for they shall be taxed in D. 21 E. 3. 42. (3.) B. shall not be taxed in D. for the Beasts which are there commoning, if they are not levant and couchant there. 18 E. 3. 11. (4.) He may be distrained in C. by the Collector of the Town of D. after a Tax so made in D. 2 H. 4. Quind. 3. And note well; When Collectors are made of Fifteenths, they may distrain a Man without Assessment, by the Portion of his Goods according to the Estimation; and if he be estimated more than is reasonable, he shall have a Plea to discharge himself from the Surplusage. 20 E. 3. Avowry 130.



*nobis per laicos concessæ non molestetis in aliquo seu gravetis, & distriction', si quam ei ea occasione fieri feceritis, sine dilatione relaxar' fac' eidem. Proviso quod de terris & tenementis, si quæ per præf. W. vel prædecessores suos, ad prædict' (a) præbend' post Annum Domini Edwardi quondam Regis Angliæ avi nostri vicesimum, acquisita fuerint, nobis de hujusmodi decima & quindecima juxta bonorum & catallorum in dictis terris & tenementis existent', & de eisdem provenient' respondeat, ut est justum. Teste, &c. And upon that he shall have an Alias and Pluries, and Attachment.*

*Writs directed to make Proclamation, that none cast Filth or Dung into Ditches or Rivers, near Cities or Boroughs, made Anno 12 R. 2. cap. 10.*

**I**F any one cast any Dung, Filth, or Intrails of Cattle into Ditches, Waters, or other Places which are next to any City, Borough or Town, he who will, may sue forth a Writ directed unto the Mayor, or Sheriff, or Bailiff of such Town, &c. That they make Proclamation that none so do, and that those that have so done, that they cause to remove and carry away the same from thence: And this Writ is founded upon the Statute of 12 R. 2. cap. 13. and the Writ is such:

*Rex Ballivis suis Vill' de Novo Castro super Tinam salutem. Cum in statuto in Parlamento nostro apud Canterb' Anno regni nostri 12 tento, edito, inter alia contineat' quod proclamatur fieret tam in Civitate Lond' quam in aliis Civitatibus, Burg', Villis, & eorum suburbiis ubi necesse foret, tam in-*  
fra

(a) Note, That in the 20th Year of K. E. 1. all Ecclesiastical Benefices were taxed; and therefore according to that Rate they are charged to the King, on a Tenth granted by Convocation, (they are discharged of Tenths, &c. there) 17 H. 4. 33. But if an Abbot be seised of a Seignior. 20 E. 1. and after that Time the Tenancy escheats, as to that it is taxable among the Laity, but the Seignior was annexed to the Spirituality. Anno 20 E. 1. quod vide; And see 29 E. 3. 20. But if an Abbot was seised at that Time, and afterward made a Lease at Will, or for Life or Years, the Lessee shall not pay the Fifteenth, for it is the Abbot's Land. 29 E. 3. Quinzime 1. also if the Abbot was seised of a Grange. Anno 20 E. 1. and afterwards Habitations are made there, and the Grange becomes a Town, they shall not pay to the Fifteenth, because the Abbot who is Lord pays Tenths with the Clergy for the same Land. 11 H. 4. 36. per Thirn. See Rot. Parl. 15 E. 3. Art. 25 & 32. Pos-

sessions of Churches purchased and appropriated, not taxed among other Temporalities in the Tax of Tenths, but charged with Fifteenths, &c.

See Rot. Parl. 20 E. 3. Art. 44. Religious Men who paid Tenths among the Clerks, and only paid them 20 E. 1. discharged of Fifteenths, for the Possessions of which they paid Tenths, and of the Lands whereof they did not pay Tenths being charged with Fifteenths.

See 11 H. 4. 37. per Thirn. If an Abbot had a Manor. Anno 20 E. 1. for which he was charged with Tenths, and afterwards aliens it: Now the Alienee shall pay to the Fifteenth; but if it comes to the Abbot again, he shall not pay to the Fifteenth assessed after it so returned; but if the Alienee was taxed to the Fifteenth before, and it afterward comes to the Abbot, he may distrain for it, otherwise if the Abbot comes thereto by his Reversion. Rot. Parl. 1 R. 2. Nu. 102.

[177.]

fra libertates quam extra, quod omnes illi qui finos, exitus, intestina, aut alia fœtida jactaverant seu posuerant in fossatis, ripariis, aquis, & aliis locis infra, circa, & prope diversas Civitates, Burgos, & Villas regni nostri Angliæ, & Suburb' eorundem, ea totaliter amoverent & asportarent ante festum, &c. sub pœna xx l. nobis solvend'. Et quod Majores & Ballivi de qualibet Civitate, Burg' & Villa & etiam Ballivi libertatum eos compellerent ad hoc faciendum, sub pœna consimili. Et insuper, quod proclamat' fieret tam in dicta Civitate Lond' quam in aliis Civitatibus, Burgis, Villis, & aliis locis superius nominatis, quod nullus cujuscunque conditionis foret, hujusmodi nociva, exitus, finos, intestina, & fœtida in fossatis, ripariis, aquis, & locis supradictis extunc jactaret sive poneret. Et si quis hoc fecerit, vocetur coram Cancell' per breve ad sectam illius qui se inde conqueri voluerit, & si inventus foret inde culpabilis, puniatur secundum discretionem Cancellar' prout in statuto prædicto plenius continetur. Jamque ex parte dilectorum nobis in Christo Prioris & fratrum Ordinis Heremitarum S. Augustini dictæ Vill' de Novo Castro super Tinam intellexerimus, quod quamplures homines ejusdem Villæ finos, exitus intestina, & alia fœtida in quadam via, quæ se ducit prope mansion' prædict' Prioris & fratrum in eadem Vill', jactaverunt & posuerunt, in ipsorum Prioris & fratrum, ac aliorum conversant' & transeuntium ibidem nocument', & Vill' suæ periculum manifestum, & contra formam statuti prædict'. Nos volent' stat' illud inviolabiliter observari, vobis præcipimus, strictius injungentes quod in Vill' prædict' ex parte nostra proclamat' fac' ne quis, cujuscunque conditionis fuerit, aliqua nociva, exit', finos, intestina, seu fœtida quæcunque in via prædict' jactet seu ponat. Et quod omnes & singuli qui hujusmodi nociva ibidem jactaverint seu posuerint, ea sine dilatione amoveant & asportent juxta formam statuti prædict'. Teste, &c.

And it seemeth, That the Chancellor may award a *Pone* against him, or an *Attachment*, to make him come before him in the Chancery; and there punish him according to his Discretion. And it seemeth that he who is grieved by that *Nusance*, may have an *Action* upon the Statute against him who did the *Nusance*, and recover Damages for the *Nusance* done to him; *tamen Quære*.

But by the Common Law, if a Man doth any Thing to the Annoyance of my Freehold, or of my Land in which I have an Estate for Years, I shall have my *Action* upon the Case for the same, or a *Writ* of *Nusance*, if it be Annoyance unto my Freehold.

### *Writ of Assise of Novel Disseisin.*

THE *Writ* of *Assise of Novel Disseisin* lieth where Tenant for Life, A or Tenant in Fee-simple, or in Tail is disseised of his Lands or Tenements, or put out thereof against his Will, that is a *Disseisin*; and he shall have an *Assise of Novel Disseisin* of that Ouster, &c.

And



- B** And the Rule in the Register is, that if a Man will bring (a) an *Assise of Novel Disseisin* of Lands in the County where the Common Pleas is; that then the Assise shall be brought in the Common Pleas; and if the Common Pleas be in one County, and the King's Bench in another County, if the *Assise* shall be brought of Lands in the County where the King's Bench is, then the *Assise* shall be brought and returnable in the King's Bench: And if both the Benches be in one County, the Usage is to bring the *Assise* in the Common Pleas or King's Bench at Pleasure; but that, as I think, is against the Rule of the Register.
- C** And the *Assise of Mortdaunceſtor* shall be brought in the like Manner, as the *Assise of Novel Disseisin* shall be, before the Justices of the Common Pleas, or King's Bench; and in the *Assise* a Day certain shall be put thus; *Usque in diem Jovis post Quindenam, &c.* But in *Assises of Mortdaunceſtor* the common Day shall be in *Quindenam, &c. vel in Octabis, &c.* as in other Pleas. See before 109. acc. in Attainr. Vi. 7. Ass. 7. Br. Assise 20.
- D** And in an *Assise of Novel Disseisin* in the Common Pleas, or in the King's Bench, the Justices may give Day out of Term, thus, *Usque ad diem Jovis proxime post festum S. Lucie, &c.* because that the Assise hath not any Day of Return in the Term, but Day certain which the Justices will give, and that may as well be out of Term as in Term. And by the Statute of (b) *Articuli super Chartas*, in every Writ of Summons and Attachment there ought to be fifteen Days betwixt the Date and the Return thereof; but in *Assise of Novel Disseisin* in the Common Pleas, or in the King's Bench, there needeth not be fifteen Days between the Date and Return thereof, as it seemeth by the Statute. 30 Ass. 44. B. Assise 116. for their Patent ought to be dated fifteen Days before the Day.
- E** And in an *Assise of Novel Disseisin* sued before Justices in Eyre, or before Justices of the King's Bench, or Common Pleas, the Plaintiff ought not to have any Patent to the Justices, for they have Authority without a Patent: And so have Justices of Assise Authority to take *Assise of Novel Disseisin* without any Patent made unto them by the Statute of *Westm. 2. cap. 13.* but then the Form of the Writ is such: 22 Ass. 9. 29 Ass. 40. Br. Assise 300.

G g g

Rex

(a) See *Mag. Chart. c. 12.* That Recognitions of *Novel Disseisins*, and *de Mortdaunceſtor* shall not be taken but in the proper County. A Cryer of the Common Pleas for Life, the Court then held in Com' S. is disseised, and brings his Assise, then the Court is removed to *Westminster*; yet the Plea shall be continued in C. B. and the Assise shall be taken by *Nisi prius* in the County of S. where the Disseisin was. 7 H. 4. 45. 8 E. 4. 16. 19 Ass. 45. And although the Court be removed, and also the Office; yet the Assise ought to be brought, and the View made where the Disseisin commenced, and he may well enough recover the Seisin there. 8 E. 4.

10. 7 E. 3. 57. *Nich. Dagworth's Case.* See *Dyer* 250. Judgment may be given in C. B. on a Verdict adjourned thither for Difficulty; and so on a foreign Issue where it is found over, &c. if the Plaintiff will release his Damages. See an Adjournment of an Assise from one County to another, without any Resummons. *Dyer* 375. L. 5 E. 4. 134. *Cafe de Com' Salop.* 22 H. 6. 11.

(b) It seems that the Statute *Artic' super Chart.* gives the Averment of not attached by fifteen Days. 10 Ass. 40. 12 Ass. 4. For before that Statute, Persons so attached were not to have the Summons of fifteen Days. *Bract. l. 4. c. 16, 182.*

Which  
proves, that  
the Bailiff  
is Party  
quodam-  
modo.  
Vide 7 Aff.  
12. Br. Af-  
fide 122.

*Rex Vic', &c. (a) Questus est nobis A. quod B. injuste & sine judicio disseis. cum de libero tenemento suo in C. post primam (b) transfret' Domini H. Regis filii I. in Vascon', & ideo tibi præcipimus, quod si præd' A. fecerit te secur' de clamore suo prosequend' tunc facias tenement' illud reseisiri de catal' quæ in ipso capta fuer', & ipsum tenementum cum catal' esse in pace, usque ad primam assisam cum Just' nostri in partes illas venerint, & interim fac' 12. liberos & legales homines de Visn' illo vider' (c) tenement' illud, & nomina illorum imbrevari, & sum' eos per bonos sum' quod sint coram præfat' Just' ad præfat' ass. parati inde facer' recognit', & pone per vad' & (d) salvos pleg' præd' B. vel Ballivum suum si ipse inventus non fuerit, quod tunc sit ibi ad aud' ill' recogn', &c. & habeas ibi sum' nomina pleg' & hoc breve.*

And if the Writ of Assise be brought before other Justices than before the Justices of Assise in the same County, then the Writ shall be in another Form, which is such : Rot. Parl. 25 E. 3. No. 35.

*Rex Vic', &c. Questi sunt nobis A. & B. uxor ejus quod C. injuste, &c. (e) disseisivit eos, vel præfat' B. de libero tenemento suo in N. Et ideo tibi præcipimus, quod si prædict' A. & B. fecerint, &c. in pace usque ad certum diem quem dilecti & fideles nostri R. & F. tibi scire fac', & interim, &c. & sum', &c. quod tunc sint coram præfat' R. & F. & his quos sibi associaverimus ad certum locum quem idem R. & F. tibi sciri fac' parati inde facere recognitionem. Et pone, &c.*

And upon that Writ they ought to have a special Patent directed to the same Justices, because they are not the Justices of Assise of that County, and the Patent shall be such :

(a) *Rex*

(a) If the Writ be *Monstravit nobis*, it shall abate. 11 H. 6. 20. and so if *injuste & sine judicio* be omitted; so if the Writ comprises the Certainty of the Demand, *Quære*.

(b) See *West. 1. cap. 38*. Yet it seems, tho' those Words are not in the Writ, if it appears to the Court by the Plea, that the Disseisin was after that Time, the Writ is good. *Note* ; 'Tis a good Plea to say, that he was not disseised after the Time of Limitation. 13 H. 4. 16.

(c) *Note* ; If it appears by Examination, that the Jurors have had a View of the Tenements of their own proper Notice, without the calling them thereto by the Sheriff, &c. 'tis well enough. *Dyer* 61.

(d) If any Stranger finds Pledges it suffices, for he shall be intended Bailly. 8 H. 4. 6. and if the Bailly returns *attach'd per plegios*, 'tis well, tho' it be not said, *quod Defendens non est inventus*, for it shall be intended. See 26 Aff. 33. 28 Aff. 40. and if the Defendant appears, 'tis suf-

ficient, tho' he was only summoned by 15 Days, and not attached by Pledges or Goods. 34 Aff. 1. and *Note* ; 4 or more Defendants may find 2 Pledges in the County. 8 H. 4. 6. and *Ibid.* the Trial of the Attachment shall be by Oath of the Balies ; and *per Cur.* If the Defendant be returned *Nilil*, the Assise shall be taken by Default, without speaking with the Bailly. 7 Aff. 12. and *Nilil habet* is a good Return in Assise, without saying *non est inventus*, for he may be attached by Pledges. 11 H. 6. 4. and see there *fol. 3.* tho' *Nilil* be returned, yet the Assise shall be awarded.

(e) A Writ brought by Baron and Feme, was *quod disseisivit eos* ; where the Disseisin was before the Coverture, it shall abate by Plea of the Tenant ; but if Not guilty be pleaded, and this Matter found by Verdict, it shall not abate the Writ. 14 H. 6. 7 H. 7. 24. 4 Aff. 6. 24 E. 3. 50. and yet if a Feme disseiseth, and then takes Husband, the Writ shall be *quod Disseisiverunt*. 7 H. 7. 2. 4 E. 4. 17.



**R** (a) *Rex dilectis & fidelibus suis R. & F. salutem. Sciatis quod constitutum vos Just' nostros una cum his quos vobis associaverimus ad ass. Novel diff. capiend', quam A. & B. uxor ejus arrain' coram vobis per breve nostrum versus C. de tenementis in N. & ideo vobis mandamus, quod ad certos diem & locum quos ad hoc provideritis ass. illam capiat' factur' inde quod ad Just' pertinet secundum legem & consuetudinem regni nostri, salvis nobis amerciamentis inde provenientibus: Mandamus enim Vic' nostro Linc' quod ad certos diem & locum quos ei sciri fac' ass. illam coram vobis venire fac'. In cujus rei testimon' has literas nostras fieri fecimus patentes. Teste, &c.*

[178.]

**A** And if the Writ aforesaid be directed to the Sheriff, and those who are assigned by the Writ to be Justices of that Assise, be the Justices of Assise in the same County, then it seemeth the Party needeth not to have a special Patent to them for that Assise; for their (b) general Patent to them to take all Assises shall be sufficient for that Assise and all other Assises: For the Justices of Assise use but to make one general Precept for all Assises according to their general Commission and Patent; and not to make a special Precept for every special Writ directed to the Sheriff, and especial Patent made unto them to take any special Assise for such Party.

29 Ass. 40.

**B** And if an Assise be brought in the Common Pleas, or King's Bench, there the Form of the Writ is:

*Questus est nobis A. quod B. injuste, &c. (usque ibi) in pace, usque ad diem Sabbati in Octavis S. Michael. proxim' futur'. Vel sic, Usque in diem Sabbati proxim' post crastinum animarum proxim' futur' & interim, &c. & summ', &c. quod, &c. coram nobis apud W. vel coram Justic' nostris apud W. parati inde, &c.*

**C** And in Assise when he purchaseth the Writ, he ought to find Sureties in the Chancery; and then the Form of the Writ is such:

*Rex, &c. Questus est nobis A. quod injuste, &c. diff. eum de libero tenemento suo in N. post primam transfretat. Domini H. Regis filii Regis I. in Vas. Et quia prædict' A. fecit nos secur' de clamore suo prosequend' per C. & D. in Com' tuo, tibi præcipimus, quod facias tenementum illud rescisiri, &c. ut supra.*

**D** And another Form of the Writ against a Body corporate, is thus (c):

G g g 2

Questus

(a) *Note*; The Patent remains with the Plaintiff. 33 H. 6. Assise 460. The Justices may call the Jury, tho' the Party does not shew his Patent. For if he brings his Patent before the Assise ought to be awarded, 'tis Time enough. 3 H. 4. Ass. 358. See 8 R. 2. Ass. 368. 34 Ass. 8.

(b) And yet See 5 E. 4. 133. a general Patent is sufficient for all Assises arraigned before the Patent, but for those arraigned after the general Patent, there ought to be a special Patent, *Quare*. 29 Ass. 40.

(c) *Note*; An Assise of Rent lies against the Pernor only, or against all, or against

the one, or the other. 9 E. 4. 11. But if an Assise brought against the Pernor and the Tenant, the Tertenant shall not plead in Bar. 12 H. 4. 21. Ass. 1.

*Note*; An Assise of Rent-Service may be brought against the Tenant in Right, tho' he be not Tenant of the Land, as against the Mesne. 17 E. 3. 69. and in such Case, tho' he be disseised. 9 E. 3. 8. or if he makes a Gift in Tail, *contr.* if he makes a Feoffment, tho' the Feoffee does not give Notice. 3 E. 3. 21. See 33 E. 3. Ass. 456. the Pernor shall be named, else it shall abate. *Note*; In a *Præcipe* of Rent against

33 E. 3.

Brief 921. 22

H. 24. 5 E.

2 Avowry.

206. 19 E. 3.

Brief 468.

contr. 3 Aff.

pl. 18. Plow.

86 b. 11 E. 2.

Garranty 83.

*Questus est nobis A. quod B. Major' Civitatis C. & communitas ejusdem Civitat' injuste, &c. Vel sic, Questus est nobis A. quod I. Abbas beate Mariæ Ebor' & frat' P. de C. commonachus ejusdem Abbatis & frat' I. de P. conversus ejusdem domus injuste, &c. Vel sic, Questus est nobis C. Capellanus Cantuarie in Ecclef. de N. quod B. injuste, &c.*

If a Man have a Rent-service, or a Rent-charge, or Rent-seck, issuing out of Land for Life, in Tail or in Fee, if he be disseised of the Rent, he shall have an Assise, and the Writ shall be general, *quod injuste, &c. disseisvit eum de libero tenemento suo in N.* and shall make his Title to the Rent.

(a) And the Rule in the Register is, that when a Man is disseised of a Rent-charge, or of a Rent-seck, it behoveth that all the Tenants of the Tenements charged, be named (b) in the Writ of Assise, and all the Land put in View, altho' he were disseised but by one Tenant only, but it is otherwise of a Rent-service.

3 H. 5. 13.

7 E. 6. 89.

13 Aff. 38

West. 1. c.

31.

And in an Assise of *Novel Disseisin* a Man shall not vouch any one, E unless he be named in the Writ, and present when he is vouched, and would presently enter into the Warranty, and warrant the Land, &c.

1 Inst. 20. b.

35 H. 6. 7.

3 E. 3. Aff.

175 401.

9 E. 4. 6.

8 E. 4. 16.

22 E. 6. 4.

6 Aff. 12. Br.

Assise 145.

(c) But in an Assise of *Mortdauncestor*, he may vouch at large. And F a Man shall have an Assise of *Novel Disseisin* of an Office if he have the same for Life; and the Writ shall be, *Quod disseisvit eum de libero tenemento suo in D.* and he shall make his Complaint of the Office, and shew his Title in the Plaint.

And so if a Man have any Profit granted unto him out of Land for Life, or in Fee, as to have the Fruit of Apples, Nuts, Acorns, or other Profits whatsoever, he shall have an Assise of them if he be disseised of them, as appeareth by the Statute of *West. 2. cap. 25.* (d).

31 E. 1. Aff.

44c.

And so of Toll, Tonnage, Passage, Pontage, Pannage, and other G like. And if Tenant by Statute-Merchant, or by (e) Statute-Staple be disseised of any Lands which they have in Execution until their Debts be

against *A.* who pleads that the Tenements put in View are 3 Acres, whereout the Rent is supposed to issue, and that one *B.* holds a Mease not named, 'tis no Plea without saying that he is Pernor of the Rent; adjudged 21 E. 3. 33. An Assise lies of Tithes against the Pernor, without naming the Tenant, for Tithes are not issuing out of the Land. *Dyer* 84. See Sir *Nicholas Affon's* Case; if *A.* has a Rent, and *B.* levies the Rent, claiming the Rent, and it is not paid to *A.* *B.* is Pernor, and the Assise must be brought against him, and not only against the Tertenant, per *Fitzh.* But *Shard* denied it, and said, it could not be intended the same Rent. 30 Aff. 5. See it brought against the Pernor alone. 22 H. 6. 23.

(a) And so 'tis, tho' it be a Rent-seck, which once was a Rent-Service.

(b) Altho' he be out of Court by his Default. 13 Aff. 1. and there be a Recovery in Value. 16 Aff. 19. and he shall vouch or have Aid of him, who is named in the Writ only. 9 H. 5. 13.

(c) See the Notes at the End of this Writ of Assise of Offices, &c.

(d) And so of Estovers, &c. if the Tertenant cuts down the Wood, &c. 2 H. 4. 11. but the Stat. does not extend to an Easement as a Way, &c. thereof an Assise does not lie. 34 Aff. 14. See a Plaint of Estovers in Time of R. 2. *F. Grants* 104.

(e) If the Tenant by Stat. be ousted, the Tenant of the Freehold shall have an Assise, and also the Tenant by the Stat. and if the one recovers first, the Writ of the other shall abate. 12 H. 6. 4.



be levied, they shall have an Assise of *Novel Disseisin* and recover their Term; and yet they shall have but a Chattel, *scilicet* the Land for the certain Term of Years, but that is by Reason of Statutes thereof made.

And so he shall have an Assise, &c. of the Land which he hath in Execution by *Elegit*, if he be deforced thereof, by the Staute of *West. 2. cap. 18.*

H (a) And by the Statute of *West. 2. cap. 25.* Assise is given if one with his Cattle do eat the several Pasture of another, the other may have an Assise of the Pasture, and waive the Possession, although the other do not claim the Freehold of the Land.

I And so if the Lord, or other Man who hath a Rent issuing out of the Lands, do often distrain for the Rent or Service where none is behind, the Tenant may have an Assise for this Distress by (b) the Common Law. And that Assise lieth between the Lord and the Tenant, or between the Lord Paramount and the Tenant Paravail, as appeareth 27 *Aff. 51.* But it seemeth reasonable, that the Tenant have the Assise of *Sovient foits* distrained against him who claimeth a Rent-charge out of Land; *tamen quære.* And if a Man sueth divers Assises against one Man in several Towns, or against several Men in several Towns, he may sue forth a Patent to the Justices for all those Assises; and the Form of the Patent shall be such :

*Rex dilectis, &c. salutem. Sciatis quod constituim' vos, &c. ad Aff. Novel' Disseis. &c. quam, &c. de tenementis in N. &c. ad Affsam Novel' Disseis. capiend' quam idem A. &c. coram vobis per aliud breve nostrum versus, &c. de tenementis. Et sic si plures fuerint.*

A If a Man be seised of Parcel of a Rent which is payable at a Day, and afterwards the Tenant will not pay the Residue of the same Rent which is due at the same Day, he who ought to have the Rent shall have an Assise of *Novel Disseisin* of the whole Rent, as well of that which he is seised of as of the Residue, and that Seisin of Parcel of the Rent shall be to him a Seisin of the whole Rent. And if a (c) Man do distrain for his Rent pendant an Assise for the same Rent, he shall abate his Assise; but if he distrain for Homage pendant the Assise for the Rent, which is Parcel of that Service, that shall not abate the Assise, for an Assise doth not lie of Homage.

And

(a) See by the Stat. 32 H. 8. in an Assise for Tithes, the Writ shall be *de libero Tenemento*, and he shall make a special Plaint and Title therein. *Dyer 83.*

(b) See 28 *Aff. 50.* No Assise lies, for too often or excessive Distraining, or for distraining for Homage, Fealty or Suit. For, for these Duties no Distress can be excessive. 42 E. 3. 26. And in this Writ a Stranger being Tertenant may plead *Rien arrear.* See 27 *Aff. 57.* 28 *Aff. 50.* 20 E. 3. 45. 33.

(c) But 'tis otherwise, if the Baili

distrains without his Comandment or Consent. 20 E. 2. *Aff. 397.* the Grantee of a Rent-charge being seised, demanded the Rent on the Land, the Tenant not being there, 'tis not paid, he distrains, a Stranger without the Tenant's Assent, makes Rescous; an Assise on this being brought against the Tenant, it abated, because tho' Non-payment be a Disseisin, yet when he is distrained afterwards the Disseisin is purged, and he shall have an Assise alone, but the Rescous, and the Rescussor ought to be named. 29 *Aff. 52.* and 59. *Vide Post. K.*

27 *Affise 51.*  
Br. *Aff. 274.*  
28 *Aff. 50.*  
6. Br. *Aff.*  
291.  
9 H. 7. 5.  
14 H. 6. 26.  
27 *Aff. 21.*  
the Plaintiff  
distrained  
for Fealty  
pending a  
Cessavit, &c.  
20 E. 3. *Aff.*  
33.

[179.]

5 E. 4. 2.  
12 E. 3. 7.  
49 E. 3. 15.  
Litt. 129.  
8 *Aff. pl. 4.*  
29 *Affise 22.*  
Br. *Aff. 302.*  
Fitz. 288.  
47 E. 3. 7.  
12 E. 4. 11.  
29 *Aff. 52.*

Quære, if  
for frequent  
Distress 28.

Ass. 50. Br.  
Ass. 291.

8 H. 6. 24.

34 H. 6. 46.

2 R. 2. 2 H.

4. 3. 3 E. 3.

74. 49 E. 3.

14. 15 Ass.

44. 49 Ass. 5.

Dyer 193.

7 Ass. 18.

Br. Ass. 127.

11 Ass. 13.

ibid. 168.

18 Ass. 4. 20.

per Cur'.

14 Ass. 1.

11 Ass. 30.

18 Ass. 4. 42, 43.

15 H. 7. 10.

If there be sufficient at the Time of the Improvement, altho' not after, it is not material. Ass. 18.

And Seisin of Rent by an Abbot shall be a sufficient Seisin for the C  
Successor to have Assise of the Rent if he be denied the same, or Res-  
cous made against him; but Seisin of Rent of the Father shall not be  
sufficient Seisin to the Son, to have an Assise of the Rent if Rescous be  
made unto him of the Rent; because that the Abbot hath the Rent in  
the Right of his House, which House continueth, and so the Seisin of  
the Predecessor is the Seisin of the Successor, but the Father hath the  
Rent in his own Right; and the Son shall have the same in his  
own Right; and then he ought to have a new Seisin. And a D  
a Man may have one Assise of several Rents, or of Land and Rent;  
and Officers and Profits apprender in his Soil, and all in one Writ.  
(a) And the Lord Paramount may have Common appendant in the Lands E  
of the Tenant Paravail to his Lands which he hath by Purchase; and  
the Tenant Paravail may improve against the Lord Paramount, as well  
as he may against other Commoner or Neighbour, if he leave him suf-  
ficient Common. *Quod vi. M. 19 E. 3. t. Assise in the Abridgment (b).*

2 E. 4. 5.

22 E. 4. 9. 14.

16. 12 E. 4.

5. 2 H. 6. 2.

And the Seisin of the Guardian, shall give Seisin to the Ward to have F  
an Assise if he be disseised. And so of Tenant by Statute-Merchant.  
And Seisin by the Hands of Tenant for Life of Lands out of which a  
Rent is issuing, is a sufficient Seisin to have an Assise of the Rent, if it  
be afterwards denied.

2 H. 6. 17.

8 Ass. 16.

Assise 191.

And so it seemeth (c) Payment of the Rent by the Tenant for Years  
of the Land is a sufficient Seisin to have an Assise of the Rent, if it be  
afterwards denied; *Tamen quære.*

21 H. 7. 35.

or 350. 44.

E. 3. 23.

contr. 7 E.

4. 7. 12 E.

4. 9. 41 E.

A Feme Covert shall not be a Disseisorefs of any Land if she do not G  
actually enter, nor shall she be a Disseisorefs by the Husband's Act.  
And an Infant shall not be a Disseisor by his Commandment. But a Man  
of full Age may be a Disseisor if he command another to enter into Land.

3. 24. 16 Ass. 7. 35 Ass. 5. 8 H. 6. 14.

2 Ass. 3. 12.

Ass. 87. 5 E.

4. 15. 34 Ass.

pl. 12. 13.

H. 7. 16. 40.

E. 3. 21. 49.

E. 3. 15.

(d) If a Man recover a Rent, the Sheriff may put him in Seisin by H  
Wood, or by any Parcel of the Land out of which the Rent is issuing.

And Seisin of Rent by a Parson, or a Chantry Priest which  
they have in the Right of their Church, shall be a Seisin to their Suc- I  
cessors to have an Assise of the Rent, if they be denied the same after  
the Death of their Predecessors as well as of an Abbot, &c. *Quod Vid.*  
34 E. 3. Lib. Ass. A Man

(a) Also appendant to the Demesns of  
his Manor. 18 E. 3. *Admeasurement* 7. and  
accordingly adjudged. 18 E. 3. 42, 43.  
and see if the Tenant shall have a *Quo*  
*Fure* there.

(b) For he has not Common *ratione Do-*  
*mini.* Assise of Common, see the next  
Writ *Post.*

(c) See Seisin of the Rent by the Hands  
of the Tenant at Will, pending the Writ,

abates it, as agreed, 27 E. 3. 83.

(d) But if one has such a Return on an  
Award in Replevin, this is no Seisin of the  
Rent, for by the Judgment in the Avowry,  
he shall not recover any Rent, but only a  
Pledge, and therefore 'tis adjudged, that  
upon a Judgment by the Avowant for  
Rent, no *Sciue facias* lies for the Arrears,  
for which the Avowry was made, and no  
others.



**K** A Man shall not be adjudged a Disseisor by the Act of his Tenant at Will : Altho' the Tenant at Will do Rescous for Rent, &c. he shall be adjudged the sole Disseisor and not the Tenant of the Freehold : But if the Tenant of the Land pay the Rent unto a Stranger who ought not to have the same, that Payment is a Disseisin to him who ought to have the Rent (a).

*Writ*

(a) See 16 *Aff.* 15. But 24 *E.* 3. 40. and 40 *Aff.* 19. seem *contr.* Vide B. *supra*.

*Affise, where to be taken at large.*

In Affise by an Infant, if the Deed of his Ancestor be pleaded against him, the Affise shall be taken at large, if the Deed bears Date in the same County ; but if it bears Date in a Foreign County, the Affise shall be adjourned into Bank ; and if it be taken at large, 'tis Error ; for the Deed cannot be tried in another County. 21 *E.* 3. 20. 3 *H.* 4. 17. 18. See *contr.* 26 *Aff.* 39. An Affise was awarded at large on a Divorce pleaded between the Plaintiff's Father and Mother. 30 *Aff.* 45. An Affise awarded at large on a Divorce between the Infant's Ancestors pleaded. 37 *Aff.* 5. So an Affise was awarded at large on pleading an Execution against an Infant upon a Recognizance by his Ancestor. 38 *Aff.* 5. But an Affise shall not be awarded at large, where a Fine or Recovery is pleaded against an Infant, without acknowledging the Possession to be in him. 24 *E.* 3. 64. 7 *H.* 4. per *Skrene*, If a Bar be pleaded against an Infant Plaintiff in an Affise, the Matter thereof shall be inquired, and also all those Things which may avoid the Infant's Title ; but when the Defendant pleads to the Affise, it is sufficient, if the Verdict be given without inquiring into the Infant's Title. 12 *H.* 4. 22. adjudged ; yet see there per *Hankf.* If an Infant pleads in Bar, and Title is made, the Infant shall answer to the Title, or else the Affise shall be awarded.

*Affise, where to be in Right of Damages, and where to inquire of the Points of the Writ.*

In an Affise the Tenant pleads, that the Plaintiff is a Nun professed, &c. and she is certified by the Bishop, no Nun professed, here the Affise shall be taken on the Seisin and Disseisin, and not in Right of Damages, for the Plea is to the Writ. 21 *E.* 3. 59. In *Mortduncestor* the Tenant pleads a Release, if it be found against

the Tenant, the Points of his Writ shall not be inquired, but only the Damages ; but if he pleads to the Writ, or vouches, which is counterpleaded, there shall be an Inquiry of the Points of the Writ *de Mortduncestor*. 39 *Aff.* 13. 17 *E.* 3. 28. accordant ; but if a Foreign Release be pleaded, and denied, and at the Day in Bank, the Tenant makes Default, the Affise shall be awarded *at large*. 22 *E.* 3. 4. and *ibid.* 12. an Affise awarded in Right of Damages on Failure of the Record. 24 *E.* 3. 61. an Affise awarded on a Foreign Release pleaded, and Default of the Tenant at the Day in Bank. 30 *E.* 3. 12. If the Tenant pleads a Bar which does not confess the Ouster, and the Bar is ruled insufficient, there Seisin and Disseisin shall be inquired, and therefore he may plead (or confess) an Ouster at the Taking of the Affise, per *Tanf.* 22 *E.* 4. 39. and per *Hall* and *Gascoign*, 'tis usual to inquire of the Seisin and Disseisin in such a Case, but not to award (Damages.) 8 *H.* 4. 22. If in an Affise of Rent, the Tenant pleads *hors de son Fee*, and it be found against him, the Seisin and Disseisin shall not be inquired. 10 *Aff.* 24. and 10 *Aff.* 18. so if he pleads a Release of the Plaintiff. 8 *Aff.* 15. or other Deed, &c. 11 *Aff.* 26. and so if he pleads a Deed of the Plaintiff's Ancestor with Warranty, and the Plaintiff makes Title, which is found against the Tenant. 17 *Aff.* 18. and yet it seems clear, that if the Tenant acknowledges the Plaintiff's Seisin, and he counterpleads it, which is found against him on an Issue or Demurrer, the Affise shall be taken but in Right of Damages. 28 *Aff.* 21. 23. 40. *Aff.* 19. For he is a Disseisor by the Counterpleading, and he has confessed the Seisin ; yet it seems it shall be inquired *Ex officio*, if he was a Disseisor with Force. See 13 *E.* 3. *Affise* 117. If Baron and Feme plead a Record in an Affise, and at the Day they make Default, now if the Plaintiff will release Damages, he shall have Judgment, but if the Baron makes Default, and the Feme is received, and pleads a Record, &c. and after makes Default, now the Affise shall

shall be taken on the Seisin and Disseisin. 10 H. 4. 14. 11 H. 4. 51. 37 Ass. 1. adjudged, that if the Tenant pleads to the Writ, and the Plaintiff maintains his Writ with such a Plea as proves (alleges) a Disseisin in the Tenant, and the Tenant demurs thereto, the Assise shall be awarded in Right of Damages on the Disseisin confessed. 1 H. 6. 5.

*Assise of Office, and Profit apprender.*

An Assise was brought in *Middlesex* of the Profits of the Office of Packing Wools, &c. within the Liberties of London, granted by the King, by *Norris* vers. *Conisbrook*; and 'twas agreed. (1.) That the Plaintiff in an Assise shall never abate for want of Form, and therefore, tho' the Course is in an Assise of Office or Corrody, or Common apprender, &c. to shew the Disseisin, and then the Title; yet if he shews the Title first, and then the Disseisin, it shall not abate. 9 E. 4. 6. But in those Cases where he makes Title in his Plaintiff (as regularly he ought to do in an Assise of Office, Corrody, &c. yet see *Rast. Entr.* 75. *Hors de for Fee* pleaded in Part of an Assise of Rent. 15 E. 4. 24. or of Land. 40 E. 3. 38.) There he ought to make his Plaintiff to pursue his Title, as if a Grant be made to have the Surveying and Packing of all Clothes which should go beyond Sea, he ought to shew, that those Clothes of which he was ousted the Surveying, were Clothes to go beyond Sea. (2.) He who makes a Plaintiff in an Assise of Office, need not be so precise in setting out his Title, as if he was to sue against the King by Petition; for one need not make so exact a Title against Pernors of Profits as against a Tenant, and therefore he need not shew who had the Office before, or that it was an antient Office. 9 E. 4. 11. and yet if it was not an antient Office, it ought to be created and granted by the Words *Constituimus*, &c. 8 E. 4. 6. If one makes a Plaintiff of an Office, he need not shew that it is an Office of Profit, or that Fees belong thereto. 8 E. 4. 22. and yet if it be only an Office of Charge, an Assise does not lie thereof. 27 H. 8. 38. but if he be ousted by a Pernor, he has his Remedy by some original Writ, according to his Case, and so 'tis in Case of a Corrody. 17 E. 2. *Nuper obiit* 12. in the Case of *Const.* 27 H. 8. 12. 4 E. 3. *Brief* 736. 793, 794.

*Assise, how it is to be brought of an Office.*

(1.) If he be ousted of the Office, then the Assise shall be brought of the Office, *cum pertinentiis*; for if his Plaintiff be of the Office, and of the Profits thereof, he makes his Claim of one Thing twice, and therefore his Plaintiff shall abate. 8 E. 4. 22. agreed; and so is 30 Ass. 4. for the Office of Meter. (2.) If one be ousted of Parcel of the Profits of his Office, this may be alleged to be an ouster of the whole Office, if the Party will. 5 E. 4. 8. *per Cur.* But if he will, he may make his Plaintiff only of the Profits of his Office, and if he be ousted of Parcel of the Profits, he may have an Assise of those Profits: So if one has a Corrody *de pane & cervisia*, if he be ousted of only Part of the Bread, &c. he shall have an Assise of the whole Quantity of Bread for the Necessity, but he need not bring an Assise of his Corrody. 22 H. 6. 10. 3 E. 3. Ass. 175. 13 E. 3. Plaintiff 23. 11 Ass. 22. 30 Ass. 4. and so note a Diversity between a Thing severable and entire. If *A.* grants a Rent of 20 l. out of 20 Acres, in 20 several Counties, a Denial of Part of the Rent is a Disseisin of the whole, and the Assise shall be brought *in consilio comitatus*. But if *A.* grants Estovers in 2 several Woods, and the Grantee be disturbed in one Wood, he shall not have an Assise of that only. 22 H. 6. 10, 11. (3.) If an Office extends into divers Towns, Hundreds, or Counties, it is an Office for which an Assise lies of the Profits by the Stat. *West.* 2. where *Note*; If an Office extends into divers Villis or Counties, &c. an Assise lies for the Profits in any Vill or Hamlet, where the Grantee is ousted, for the Profits are Things severable. If one be Sheriff, or Baili of an Hundred, or Manor for Life, if he be ousted of the Office, he may have a Writ or Plaintiff within the Sherifalty or Bailiwick of such County, City, Hundred, or Manor, without shewing in which of the Villis, because well known. But if it be for the Bedelry of an Honour, &c. there he ought to bring his Writ in all the Villis, where the Office extends. Also in the former Case, the Hundred, or County, (City) shall be put in View; see these Books. 16 E. 2. Ass. 370 18 E. 2. Ass. 377. 8 E. 3. 56.

If the King grants 6d. on each Sack of Wool, within the County of *York*, the Grantee shall have an Assise of the Profits in any particular Place within the County, where he is disturbed. But if he brings an Assise



Affise of the Office, the whole County shall be put in View, as in the principal Case *supra* was held, seeing the Office there extended into divers Counties. (For 'twas averred to be within the Liberties of London, &c.) therefore the Affise for the Office should be brought in *Confinio Comitatus*, but for the Profits, it may be brought in any Vill or Place where the Disseisin is; but then how shall it be in case the Office extends throughout England, and it seems to me most reasonable, that the Office should be severable, because it does not charge

the Land, but only respects the Person; and therefore he may also have an Affise of his Office in whatever Place he is disseised; as suppose he disseised him of his Office of Mesurer in such a Town, &c. See there the Case of the Usher of the Exchequer. 22 H. 6. 10, 11. *Et postea partes concordaverunt*. See an Affise of the Office of Filacer, and the Post put in View. Dyer 114. *Vaux's Case*; and if it be an Office concerning Land, it seems he ought to name the Tenant of the Soil. 8 E. 1. Aff. 285.

## Writ of Common of Pasture, Turbary or Piscary.

**L**THE Writ of Affise of (a) *Novel Disseisin*, of Common of Pasture, or of Turbary, or of Piscary, lieth where a Man hath Common of Pasture appendant or appurtenant to his Manor or House, or Land which he hath for Term of Life, or in Fee-simple, or in Fee-tail, if he be disturbed of his Common, so that he cannot take it as he ought to do, he shall have an Affise of *Novel Disseisin* thereof; and the Writ shall be such:

(b) *Rex Vic', &c. Quest' est nobis A. quod B. injuste, &c. disseisivit eum de commun' pastur' sue in N. quæ pertinet ad liber' tenement' suum in eadem villa, vel in alia villa post primam, &c. as in Affise of Land. Et ideo tibi præcipimus, quod si prædict' A. fecerit te secur', &c. tunc fac' duod' liberos & legales homines de visn' illo videre pasturam illam & tenement' & nomina eorum imbrevari: Et sum', &c. coram Justic' vel coram nobis, &c. die Jovis, proxime post crastin' Octabis, &c. Vel sic; Coram Justic' nostris ad prim' assis. cum in partes illas venerint. Vel sic; Coram dilectis & fidelibus nostris R. & F. & his quos, &c. ut supra.* 11 H. 6. 22. The Writ was de libero tenemento, and his Complaint of Common of Pasture, for which the Writ abated.

And if the Common of Pasture, or Turbary or Piscary be not appendant or appurtenant to any Manor nor Land, nor Tenement, then those Words in the Writ *which belong to his Franktenement* shall be left out in the Writ; and then the Writ shall be such:

*Rex, &c. Questus est nobis A. quod B. injuste, &c. disseisivit eum de commun' past' sue in N. post primam transfretationem, &c. (usque ibi) de vicin'*  
H h h

(a) See 2 H. 4. per *Markh.* If the Tenant ploughs the Land, wherein I have Common, I shall have an Affise, and not a Writ on the Case. See 4 E. 2. Aff. 449. that an Affise of Common does not lie without naming the Tenant of the Soil.

(b) Here *Note*, That an Affise de *Libero Tenemento* does not lie of Common, for it is no Tenement, and therefore by a Grant of all Lands and Tenements, it is held by some, that Common in gross does not pais.

And yet a Writ of Dower lies thereof, and he shall make his Demand of Common. 11 H. 6. 22. And *Note*; in an Affise of Common, 'tis not necessary to make Title in the Complaint, but the other may demand what he has of Common there. 36 Aff. 3. the other pleads *hors de son Fee*, &c. 11 H. 6. 27. See in 'an Affise for Common appendant, you need not prescribe. 22 H. 6. 10.

*cin' illo videre pasturam illam, & nomina eorum imbrevari, &c.* As in the Writ of Assise of Land.

11 H. 6. 22.  
1<sup>er</sup> Paston.

And the Patent made unto the Justices of the Assise of Common, is as the Patent made to the Justices of Assise of Land, but where it is said in the Patent of Assise of Land in that Place, *de libero tenemento suo, &c.* he shall say in this Patent, *de Communia pastura in N. &c.*

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(a) And if a Man have Common appendant or appurtenant to his Freehold which is in his Manor or Land which is in several Counties, and he is disseised of his Common, then he shall have an Assise in the County where the Common is, and another Writ in the County where the Land is, to which the Common is appendant or appurtenant. And if the Land or Common be in one County, and the Land to which the Common is, be in another County, yet the Writ shall be brought in the County where the Land of which the Common is issuing, is, and another Writ in the County where the Land to which the Common is appendant, is. And if the Land be in one County to which the Common is appendant, and the Common be in several Counties, then he shall have several Writs, in the County where the Common is, and where the Land is; and the Forms of the Writs are such:

*Questus est nobis A. quod B. injuste & sine judicio disseisvit eum de Communia Pasturæ suæ in N. quæ pertinet ad liberum tenem<sup>tu</sup> suum in R. & K. quæ sunt in confinio Com<sup>tu</sup> tui, & Com<sup>tu</sup> Linc<sup>tu</sup> post primam transfretat<sup>u</sup>, &c. Vel sic; de com<sup>tu</sup> past. suæ in N. in Com<sup>tu</sup> tuo, & Com<sup>tu</sup> Linc<sup>tu</sup> quæ pertinet ad liberum tenem<sup>tu</sup> suum in K. in Com<sup>tu</sup>, &c. Vel sic; de Communia pasturæ sue in R. & K. quæ sunt in confinio Com<sup>tu</sup> tui, & Com<sup>tu</sup> Linc<sup>tu</sup> quæ pertinet ad liberum tenem<sup>tu</sup> suum in K. in prædict<sup>u</sup> Com<sup>tu</sup> Linc<sup>tu</sup> in eodem confinio, &c.*

And upon these Writs he may have a Patent directed to certain Persons who shall do Justice in that Assise upon all the Writs.

*Rex dilectis, &c. Sciatis quod constituimus vos Justic<sup>os</sup> nostros, una cum his quos vobis associavimus ad Ass. novæ diff. capiend<sup>u</sup> quam A. arrainavit coram vobis per breviam nostram versus B. de communia pasturæ in R. & K. quæ sunt in confinio Com<sup>tu</sup> N. & L. ideo vobis mandamus, quod ad certos diem & locum in confinio com<sup>tu</sup> prædict<sup>u</sup>, vel in confinio præd<sup>u</sup>, quos ad hoc provideritis, assisam illam capiatis, factur<sup>u</sup>, &c. Mandamus enim Vic<sup>u</sup> com<sup>tu</sup> præd<sup>u</sup> quod ad certos diem & locum in confinio Com<sup>tu</sup> præd<sup>u</sup> vel in Com<sup>tu</sup> prædict<sup>u</sup> quos eis scire fac<sup>u</sup> assisam illam, &c.*

5 E. 4. 2.  
Post. 187.

21 H. 6. 9, 10.  
7 H. 4. 30.  
5 E. 4. 2. ac.  
10 Ass. 5.  
Br. Ass. 151.

And in like manner he may sue several Writs of Assise of Common of Turbary, or of Piscary, or other like Profits which are in two Counties. And when a Man hath a Rent which is issuing out of Land in two Counties, if he be disseised thereof he shall have an Assise as before is said of Common, viz. 2. Writs, one Patent, as before is said, by the Stat. 7. R. 2. cap. 10. (b).

(a) And

(a) See a Commission to inquire if A. has Common in one County appendant to Land in another County, and a Bridge is between the Land and the Common, which ought to be repaired by one, and the Bridge is broken, so that A. cannot use his

Common, he shall have an Assise where the Bridge is, and not where the Common is. 7 H. 4. 8.

(b) But it was otherwise at Common Law. 18 E. 3. 32.



- B** (a) And a Man cannot use his Common appendant with the Cattle of Strangers, unless he bring them to foil his Land: But he cannot agist other Cattle there for Money, which do not manure his Land. 6 H. 7. 4. 45 E. 3. 25. 45 E. 3. 12.  
15 E. 4. 32.  
Ryot.  
6 H. 7. 14.  
11 H. 6. 12.  
15 E. 4. 32.

The same Law where a Man hath Common as an Inhabitant, he shall have it but for those which are levant and couchant within that Town.

And if a Man grant Common unto one for his own Cattle, he cannot use his Common with the Cattle of a Stranger. A Man presumed to have Common  
 mon appendant for all manner of Beasts, and it was holden it could not be Common appendant for that the same is not but for those Cattle which manure his Lands. 9 E. 4. 3. 37 H. 6. 34. and 14 H. 6. 6. But it is Common appurtenant. Old N. B. 26.

And so if a Man prescribe to have Common for his own Cattle, he cannot use Common with other Cattle.

But if a Man (b) claim Common for Cattle without Number, or to have Common for twenty Cattle, there he may agist the Cattle of Strangers for Money in that Common. 14 H. 8. 2.  
If a Man hath Common sans

*Number granted, yet the Tenant shall have Common for his Cattle.* 11 H. 6. 22.

- C** (c) And a Man may claim Common appendant *ratione Messuagii*, but it seemeth it shall be taken that he hath Land lying to his House, &c. which the Cattle ought to foil, &c. *Quære.* 22 H. 6. 42.  
27 H. 6. 34.  
Admittitur.  
But Prisor,  
It cannot

be but to arable, 20 H. 6. 4. Hulls acc. 5 Aff. 2. It cannot be but to ancient Land of that, and not to Land improved. 10 E. 2. acc. and there the Land to which it may be appendant, is called Aid and Gain.

- D** (d) None shall claim Common by Vicinage but the Lord who hath the Possession of the Town, 23 H. 6. But yet it seemeth, that one 7 E. 4. 26.  
32 H. 8.  
Dyer 47.  
**E** Neighbour may claim Common by Vicinage in the Land of another Neighbour, although he be Lord of the Town, &c. And so if a Man claim Common in certain Lands so long as he dwelleth in such a Town to such a House, or if he claim Common in the Land until the Lands be sowed, and after the Corn is cut, to have Common there again. 37 H. 6. 34.  
acc.

- F** (e) And if a Man be disseised of the Common appendant or appurtenant to his Land, and afterwards he maketh a Feoffment of the 10 H. 6. 73.  
H h h 2 Land

(a) See these Diversities agreed in *Strode's Case*. 11 H. 6. 22. 14 H. 6. 6. and see the Case of *Rumsey and Rawson*. *Raym.* 171. *Mod.* 18. 25.

(b) See accordant 11 H. 6. 22. and therefore such Common is grantable over. See 27 H. 8. 10. that it may be granted to two. 22 H. 6. 22. 36 Aff. 3.

(c) See 22 H. 6. 44. and 11 E. 3. *Common* 11. one claims Common as appendant to his Manor. and issue joined thereupon, where 'tis said, that if one has Common

appendant to his Carve of Land, whereon he has a House, this shall not be said appendant to the House, but to the Land; and *Note* there a special Prescription.

(d) *Note*; The Lord may have in the Land of his Tenant Common appendant to his own Demesnes, per *Green*. 18 E. 3. *Admeasurement* 7.

(e) See 4 E. 3. 45. In a *quod permittat*, of the Seisin of his Grandfather. *Note*; If one grants Common, and does not shew in what Place 'tis to be taken, the Grant is Void,

So if he be disseised of the Land, he shall not have Common till his Entry.

5 H. 7. 7.

29 H. 8. 4.

7 E. 4. 27.

14 H. 6. 6.

11 H. 6. 22.

11 H. 7. 7.

32 Aff. S2.  
Thorpe.

7 Aff. Br.  
Affise 121.

Land to which the Common is appendant or appurtenant, he shall not have Affise of that Common nor other Remedy.

If a Man grant certain Lands to one *Cum Communia in omnibus terris suis*, &c. And doth not expresse any Place certain, he shall have Common in all his Lands which he had at the Time of the Grant.

And if a Man have Common of Estovers by Grant, he cannot build new Houses to have Common of Estovers for those Houses.

The User of Common by Tenants at Will, shall be a Seisin to him in the Reversion to have an Affise, if he or his Tenant at Will, be after disturbed to use the Common.

And *P. 45 E. 3.* it appeareth, that he who hath Common granted unto him by Specialty, cannot agist other Mens (a) Cattle in the Common, but ought for to use the Common with his own Cattle, or such Cattle which he hath to occupy his Land with, &c. or may manure his Lands with Cows which he alloweth to have the keeping for their Manure: But *Thorpe* said, that if a Man grant to me Common for my Cattle, that I may take other Beasts to give me Seisin in my Common, and presently drive them off again, if he who granteth the Common do agree thereunto. And in Affise of Common, all the Tenants of the Land out of which the Common is, ought to be named, &c. as in Affise of a Rent-charge.

If a Man have an Affise of Common, and pendent the Writ, he useth the Common, the Writ shall abate, but if the Cattle escape into the Land, it shall not abate the Writ although they feed there.

(b) And it is to know, Common appurtenant to a Manor may be for Cattle without Number, or to a certain Number, and may be appurtenant to a Manor by Prescription or by Grant made since Time of Memory, and that as well for Cattle certain, as without Number. As if at this Day a Man granteth to one Common of Estovers, or of Turbary in Fee-simple to burn in his Manor, by that Grant it is (c) appurtenant

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26 H. 8. 4.

Void; per *Paston*; If he grants Common throughout his Manor for his Beasts, he shall not have it in his Garden, nor in his Land sown, nor for Beasts not commonable; per *Babb.* If one grants Common in his Land, *quandocunque Averia sua ierint*, he shall not have Common, but when the Grantor's Beasts are there also; but if one grants Common to *I. S. ubiunque averia sua ierint*, he shall have Common, but in the Places where the Grantor's Beasts do go; and therefore if he justifies for such Common, he ought to shew that the Beasts went there. (2.) If the Beasts of the Grantor once went there, altho' he never had any Beasts there afterwards, yet the Grantee shall have the Common. 9 H. 6. 36. See 11 E. 3. Common 10. A. grants Common to B. *in omnibus pasturis suis*, to go there with his own Beasts; *Quare*, if he has Common, tho' the Beasts of the Gran-

tor are not there, it seems not.

(a) Or such Beasts as he had; see accordant 11 H. 6. 11.

(b) Common appendant for all manner of Beasts. 14 H. 6. 6. is not appendant, but appurtenant, if it be for Beasts not commonable. 25 Aff. 8.

(c) See 7 E. 3. 48. If one grants to *I. S.* 8 Acres of Land, *simul cum* so much Common as belongs to his Oxgang of Land in a certain Place, this is not Common appurtenant, but in gross; per *Herle*; But see there 'tis adjudged, if one grants an Affari *simul cum tota Communia quant' pertinet ad unam Bovatam Terræ*, adjudged this is Common in gross, and he shall take as much as another takes for 2 Bovates or Oxgangs in gross, and when he pleases. *Ratio*, for such Common cannot be appendant to Land.



purtenant to the Manor, and if he make a Feoffment of the Manor, the Common shall pass to the Feoffee. And so if he grant to a Man and his Heirs Common, as appurtenant to his Manor of F. to common in such a Moor, &c. Now by that Grant the Grantee shall have the Common appurtenant to his Manor, and if he make a Feoffment in Fee, or for Life of the Manor, the Feoffee or Lessee shall have the Common. As if an Abbot with the Assent of his Convent, grant to another and his Heirs, to find a Chaplain to sing in his Chapel in his Manor of D. if he make a Feoffment of the Manor, the Feoffee shall have an Action of Covenant against the Abbot and his Successors by that Grant, as it appeareth. *M. 2 H. 4. 6. T. Covenant, and H. 42 E. 3.*

Plow. Com.  
381. ac. 5.  
Ass. 9.

2 H. 4. 6.  
10 H. 7. 13.  
16 H. 7. 9.  
42 E. 3. 3.

Writ of Certificate upon Assise sued.

A THE Writ of Certificate lieth in divers Manners ; one is where the Defendant appeareth by (a) Bail, and pleads to the Assise where his Master hath a Release to plead, or other Matter in Writing, of which the Jury cannot have Notice ; then if the Assise pass against the Bailiff, the Master shall have a Writ of Certificate upon that Writing, and thereupon he shall cause the Assise to return, and be sworn to try that Deed, &c. as shall be more fully after shewed.

As a Fine or Recovery.  
8 E. 3. Br.  
Assise 426.  
4 H. 4. 5.

B (b) And there is another manner of Certificate, when the Verdict is not well examined by the Justices when they take the Verdict, or when they have not well examined, or fully enquired of the Issue joined, &c.

Plow 92 a.

C (c) And the Certificate ought to be sued in the same County where the Assise was sued, and may be sued before the same Justices before whom the Assise passed, or before other Justices. And if the King's Bench or Common Pleas be in the same County where the Assise passed, then the Certificate may be sued in the King's Bench or Common Pleas, if they be in the same County where the Assise passed.

21 E. 3. 3.  
Br. Assise 63.  
Vi. 32 Ass. 1.  
One shall have a Certificate upon a Defeasance.

And that Certificate shall be a Writ directed to the Sheriff, and the Justices shall have a Patent made to them as they shall have in Assise, &c. And the Form of the Patent made to the Justices shall be such :

12 H. 4. 10.  
41 Ass. 5.  
Certificate was at the Common Law before Judgment.  
Vi. 8 E. 3.  
Fitz. Assise  
412. Plow.  
Com. 92.

D *Rex dilectis & fidelibus suis A. B. & C. salut'. Quia super quibusdam articulis contingent. Assisam novae diff. quae inter A. & B. sum' fuit & capta coram vobis praefat' B. & dilecto & fideli nostro I. apud N. per breve nostrum*

(a) Note ; After the Assise awarded in this Plea by the Bail, the Tenant may appear in Person, and plead such a Plea, as thereon he may have a Certificate of the Assise being taken, &c. 11 Ass. 3. 8 Ass. 17. 10 Ass. 24. 12 Ass. 37. 20 Ass. 1. And so he may after the Assise awarded by Default. 20 H. 6. 29. 9 H. 7. 24.

(b) And it seems that so long as the Assise depends in Adjournment, this Execution may be made either without Writ, as 34 Ass. 1. or by Writ, as 34 Ass. 5.

(c) But if they remove it, then it shall not be taken there, but in the County by *Nisi prius*. 7 H. 4. 45.

nostrum, quædam subsunt dubitationes, sicut ex querela ipsius A. accepimus, constituimus vos Justic' nostros, una cum his quos vobis associaverimus ad certific' inde capiend'. Et ideo vobis præcipimus, quod ad certos diem & locum, quos ad hoc provideritis, certific' illam capiatis, factur' inde quod ad Justic' pertinet faciend' salvis nobis amerciamentis, &c. Mandavimus etiam vic' nostro, &c. quod ad certos diem & locum, quos ei scire faciatis, jurat' illius ass. coram vobis venire faciat, ad certificand' vos super articulis præd', &c. In cujus rei testimon' has literas nostras fieri fecimus patentes. Teste, &c.

(a) And the Form of the Writ of Certificate is such :

E

Rex Vic', &c. Quia super quibusdam articulis contingent' Ass. nov' diff. que inter A. & B. sum' fuit & capta coram dilectis & fidelibus nostris H. & R. apud N. per breve nostrum de tenement' in I. quædam subsunt dubitationes, sicut ex querela ipsius A. accepim', constituim' præf. H. & R. Vel sic; præf. H. & dilect' & fidel' nostrum L. Vel sic; dilect' & fideles nostros N. & S. Justic' nostros una cum his quos sibi associaverimus ad certific' inde capiend'. Et ideo tibi præcipimus, quod ad certos diem & locum, quos præd' N. & S. tibi scire (b) fac' jurat' illius ass. coram eis venire fac' ad certific' eos super articulos præd', & sum', &c. præd' B. quod, &c. coram, &c. ad audiend' illam certific', & habeas ibi nomina jurat' & hoc breve.

And that Writ lieth properly where the Verdict is not well examined. F But if he appeareth by Bailiff to the Assise, and plead Nul tort, &c. and it is found against him where his Master hath a Release to plead, and doth not plead it; then his Master shall have another Form of Writ upon the Statute of West. 2 cap. 15. and the Writ shall be such :

Rex dilect' & fidel' suo I. & sociis suis Justic', &c. Cum in Statuto edito apud Westm' contineatur quod si def. contra quem transierit Assisa in sua absentia ostendat cart' vel quiet' clam' super quarum consecutione non fuer' juratores examinati, nec examinari potuerint, pro eo quod non fiebat mentio de eis in placitand' & probab' ignorare potuerint consec' hujusmodi scriptorum, Justic' visis script' illis faciant sciri parti quæ recuperavit, quod sit ad certum diem, & venire faciant jurat' ejusdem ass. Et si per veredictum jurator' vel forte per irrotulament' script' ill' verificatur, puniatur ille qui assis. impetravit cont' fact' suum per certam pœnam in statut' præd' content'. Ac ex querela E. accepimus, quod I. nuper arrainavit quand' assisam no' diff. per breve nostr' versus præf. E. & alios, &c. de tenementis in S. quæ quidem assisa in ipsius E. & aliorum absent' transivit ut dicitur, ac idem E. quoddam scriptum quiet' clam' præfat' I. habet de tenement' præd' super cujus consec' Jurat' non fuer' examinati, nec examinari potuerunt, pro eo quod non fiebat

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(a) See Ret. pat. 1 E. 1. M. 3. and M. 34. in Dorso. Si forte Assisa illa super quibusdam Articulis illam contingentibus minus plene Examinata fuerit vos eam plenius Examinetis.

(b) This was the Writ which lay at Common Law, and was always brought before Judgment, and was always a Perfecting of the Verdict, so that it shall be said one and the same Verdict; and therefore, if any of the Jurors therein had died after

the Verdict, the Certificate thereon could not be taken by the Residue with others; for the Assise was always pending, and therefore in that Case the Examination fails; but 'tis otherwise it seems in a Certificate on the Stat. See 12 H. 7. 9. and 43 Ass. 5. a Certificate after Verdict and before Judgment on a Deed not given in Evidence before, where the Defendant an Infant pleads in Person.



*fehbat inde mentio placiti: Vobis mandam' quod viso scripto ill' eidem E. in promiss' debitum & festinum justic' complement' fieri fac' juxta form' Stat' præd' T. &c.*

And that Writ is as a Patent made to those Justices, and upon that they award a Certificate to the Sheriff, to warn the Party to cause the Jurors in Assise to come before them. And that Patent or Commission is commonly made to other Justices, as unto the Justice before whom the Assise passed, and the same appeareth by the Words of the Patent or Commission.

A (a) But by the Statute of *West. 2. cap. 25.* appeareth, that if the Bailiff of the Defendant do alledge a Record in Bar of the Assise, the Justices may take the Assise notwithstanding that Plea of the Bailiff, and give Judgment upon the Verdict, &c. But then the Defendant in the Assise may come to the Justices, and shew that he hath Matter of Record to bar the Plaintiff in the Assise, &c. That at another Time he barred the Plaintiff in the like Assise, brought by him against the Defendant; or that there is a Writ of higher Nature depending between them for those Lands; and then he ought to sue forth a Writ, to cause the Record to be brought before the Justices before whom the Assise passed; and thereupon when the Record cometh before them, if they perceive that the Record shall be a Bar in the Assise, then the said Justices shall award a special Writ of *Scire facias* out of the Record of the Assise, to warn the Party to be before them, &c. and if he cannot deny it, nor avoid it, then the Defendant shall recover his Seisin again, and double Damages, and the Plaintiff in the Assise shall be imprisoned at the Discretion of the Justices. And if the Defendant in the Assise have not any Record to shew, (b) but a Release, or other Matter in Writing, which might bar the Plaintiff who recovered in the Assise; then if the Defendant shew those Writings to the Justices, before whom the Assise was taken, the Justices thereupon may award a special Writ of Certificate directed to the Sheriff, that he summon in the Party, and that he cause the (c) Jurors in the first Assise, &c. to try that Matter, &c. And if it be found for the Defendant, then the Plaintiff, who recover'd by the Assise, &c. shall lose double Damages, and shall be also imprisoned at the Discretion of the Justices, as appeareth by the said Statute.

But

(a) See 12 H. 4. 9 After Judgment given for the Plaintiff in Assise upon the Death of the Justices, a *Certiorari* issued out of Chancery to the Executors of the Justices, to send the Record into Chancery, and from thence a *Mittimus* is sent to the Justices of Assise in the County, with a Writ reciting the Statute.

(b) *Quare*, if he shew a Release bearing Date in a foreign County, to what Purpose or Intent shall the Assise return (it.) 12 H. 4. 9.

(c) It seems *per Cur'*, that the Party shall not have his Challenge to those Jurors in the Certificate; *Quare*, if it be a Matter happening *ex post facto*, as Attaint of the Jurors, &c. Yet it seems, if others are joined with the Jury, as where any of them die, &c. he shall have his Challenge, *per Hull*, altho' the Jury came the first Day in the Certificate; yet if they make Default, the Parties shall plead notwithstanding. And *Note*; If the Deed may be proved by Record, then the Inquest is not to the Purpose. See 12 H. 4. 9.

But whether the Defendant shall sue a special Patent to the same Justices, to proceed as the Writ aforesaid is, or that they shall proceed and award a special Certificate, upon the Matter in Writing shewed them by the Defendant, hath been a Question, because by the Judgment in the Assise, and Execution awarded, their Authority by Commission is determined as some say. But I conceive, that the Statute is a Commission and Patent sufficient to give Authority to them to award a special Certificate to warn the Party, and to cause the Jurors of the Assise to appear before them upon the Matter in Writing shewed unto them, although Judgment be given in the Assise, and Execution be past; for if there be such Matter, then their Authority remaineth to punish the Plaintiff for his Suit, and to restore the Defendant again unto his Possession, by Virtue of the Statute, as I conceive.

And if a Man loseth in an Assise by Default where he pleadeth by C Bailiff, where he hath Matter in Writing not shewed to the Jurors, he may sue a Certificate upon that Matter before the Justices, at the next Assise following, or before the Justice of Assise, or before the Justices of the King's Bench, or before the Justices of the Common Pleas; and the Form of the Writ is such:

*Rex Vic', &c. Quia, &c. ut supra, (usque ibi,) accepim'. Tibi precipimus, quod juratores illius Ass. venire facias coram Justiciar' nostr' ad prim' Assisam, cum in partes illas venerint, ad certificand' eos super articul' pred' & sum', &c. predict' B. quod sit ad presat' Assisam coram presat' Justiciar' ad audiendum illam certific'.*

And if the Certificate be sued before the Justices of the Common Pleas, then the Writ is such:

*Rex Vic', &c. Quia, &c. ut accepimus: Tibi precipimus, quod juratores illius ass. venire facias coram Justic' nost' apud West' tali die ad certificand' eos, &c. ut supra.*

And if the Certificate be sued before the King, then the Writ is as above:

*Tibi precipim' quod jurator' illius ass. venire fac', &c. coram nobis apud E. die sabbati, &c. ad certificand' nos, &c.*

If a Man in Assise brought against him pleadeth a Release, or other D Matter in Writing in Bar of the Assise, and the Plaintiff doth deny the same, by Reason whereof the same doth remain in the Keeping of the Chief Justice of the Assise; and afterwards a new Commission is made to the Chief Justice, and to other Persons, to take all Assises which remain to be taken in that County, for which Cause they award a Reattachment against the Defendant, and a Resummons against the Jurors; the Defendant may come and plead the Release or Writing, which is in the Keeping of the Chief Justice, which was denied, &c. And thereupon the Chief Justice shall have Day until the next Assises, to bring in the Writing; and if before the next Assises the King's Bench be removed to that County, and that Record of the Assises is come into the same Court, and the Defendant is reattached, and appeareth not, but maketh Default, for which the Assise passeth for the Plaintiff, &c. and that Release not pleaded nor shewed, the Defendant shall have a special



special Writ to the said Justice, in whose Custody the Release or Writing is, to send the same into the King's Bench, and thereupon the Defendant shall have his Certificate out of the King's Bench, against the Plaintiff upon that Matter; and such Writ is in the Register.

[183.]

A If a Man sue a Certificate, he may have a Writ of Association upon that Writ, as in Assise of *Novel Disseisin*, and also a Writ of *Si non omnes*, as well as he shall have in Assise of *Novel Disseisin*.

B And a Man may sue the Certificate before the same Justices, (a) before whom the Assise passed, and then the Certificate shall issue out of the Rolls of the same Justices: But he may sue his Certificate before other Justices if he will, and then the Writ and Patent shall issue out of the Chancery.

C And if some of the Jurors be dead, yet it seemeth reasonable that he have the Certificate; and that it be tried by those who are alive, and by others, &c. for that is a new Matter upon which they were not charged before, but see that Matter debated, 32 E. 3. lib. Ass. and 12 H. 4. 4. 7 H. 4. 45.

D Anno 43 E. 3. It appeareth that a Man shall have a Certificate before Judgment given in the Assise, as well as after Judgment given; and this is at Common Law. 43 Ass. 5.

E And a Man shall have a Certificate upon an Assise of Darrein Presentment, or an Assise of *Mortdauncester*, or *Juris Utrum*; and it is Reason that a Man have a Certificate upon an Attaint, if it pass against him by Default, where he hath Matter to bar the Attaint by Release or other Writing, &c. 12 H. 4. 9. West. 2. c. 5.

F And if the Record of Assise be removed into the Common Pleas, the Party may sue a Certificate in the Common Pleas before the Justices there, although the Assise be taken of Lands in another County. See Title *Process*, H. 33 H. 6. 7 H. 4. 45. ac. 33 H. 6. 20, 21. *Nota, Ca*

G (b) And the Process in a Certificate is Summons against the Jury, and the *Venire facias* against the Party, &c. and after a Distress. *pe pro fine* was awarded

H (c) And *Nisi prius* shall be granted in a Certificate, if the Land be in another County than where the Certificate is brought. *pendent the Certificate of Assise.*

I i i

Writ

(a) See 7 H. 4. 45. Assise taken in Banco, which is removed, a Certificate shall issue upon the Rolls there, and shall be taken by *Nisi prius* in the County. 2 H. 5. 5. a Certificate is not grantable on the Rolls; but by the same Justices before whom the Assise passed: But by an original Writ, as 21 E. 3. 3. an Assise taken in the Country and adjourned into Bank for Difficulty, and the Judgment given there: No Certificate shall issue upon the Rolls in Bank, but the Record shall be remanded to the Justices assigned, and they shall issue the Certificate upon the Rolls before them. See 33 H. 6. 20 where after a Record of a Recovery in an Assise was sent into Bank by *Mittimus*, a Certificate was there granted upon the Rolls there: But note;

It seems this Certificate was upon the Record, as it was 21 E. 3. 3. on a Fine, and 2 H. 5. 5. on a Judgment, &c. had before the same Justices; for the Statute is *quod veniat coram Justiciariis qui Assisam illam ceperint*; but on a Release as the Case is 33 H. 6. 20. there the Clause is *Justiciarii*, &c. See *Rot. Parl.* 9 E. 2. M. 7. Dorso. after the Death of the Justices of Assise, a Certificate before other Justices assigned by Patent.

(b) And the Jurors shall have the View here. See 3 H. 4. 14.

(c) See the Stat. Mag. Char. c. 12. and 7 H. 4. 45. If an Assise be arraigned in B. R. at York, and the Bank (Court) is after removed to *Westminster*, he shall have a Certificate upon the Rolls, and *Nisi prius*.

## Writ of Assise of Nufance.

4 E. 3. 36. &c.

5 E. 2. 43.

Fitz. Nufan.  
12.

Action sur le  
Case 36.

4 Ass. 3. If

Nufance be,

and after he

to whom the

Nufance is

alien the Land, the Feoffee shall not have Assise, because it was before his Interest, but the Tenant shall answer to the Nufance, as well before his Time as after. 19 Ass. 9.

**A**ssise of Nufance lieth where a Man levieth a Nufance to my Free-**I** hold, which I have for Life, in Tail, or in Fee-simple; then I shall have the Writ to redress the Nufance (a).

And if that the Nufance be done in one County, and the Land to **K** which the Nufance is done be in another County, then he ought to sue severall Writs of Assise of Nufance, to each Sheriff a Writ, and a Patent made to certain Persons to be Justices in that Assise, as it shall be in Assise of Common of Pasture, or Turbary, or Rent, or the like; and the Form of the Writ is such:

*Rex Vic', &c. Questus est nobis A. quod B. injuste & sine judicio exaltavit quoddam stagnum in C. in com' tuo ad nocumentum liberi tenementi sui in L. in com' H. post primam transfretationem, &c. Et ideo præcipimus, quod si prædict' A. fecerit te securum de clamore suo presequend' tunc fac' 12 liberos & legales homines de visn' illo videre stagnum illud & nomina eorum imbreviar', &c.*

And in the other Writ, which shall be directed unto the Sheriff where the Land is, to which the Nufance is, he shall say in the Writ, *Videre tenementum illud*. So that the Jurors where the Land is, shall see the Land, and the Jurors in the other County, shall see the Pool where the Nufance is done.

And moreover he shall say in the Writ, *Et nomina illorum imbreviar'*. *Et sum' eos per bonos sum' quod sint coram dilectis & fidelibus nostris R. & F. & his quos sibi associaverimus ad certos dies & locum in confinio com' prædict' quos idem, &c. parati, &c.* And the Form of the Patent is such:

*Rex dilectis, &c. Sciatis quod constituimus vos Justiciarios ad ass. capiend' M quam B. arrainavit coram vobis per brevia nostra versus N. de quodam stagno exaltato in C. in com' S. ad nocumentum liberi tenementi sui in L. in Comitatu H. & ideo, &c. quod ad certos, &c. in confinio com' prædict' quos ad hoc provideritis, assisam illam capiat, factur' quod ad justitiam pertinet, salvo, &c. Mandavimus enim Vic' nostris in com' prædict' quod ad certos diem & locum in confinio com' prædict' quos ei scire fac' assisam illam coram vobis venire fac'. In cujus rei testimonium has literas nostras fieri fecimus patentes. Teste, &c.*

And

(a) Where he may abate the Nufance. See 8 E. 4. 5. But by *Hankf.* he shall not have Trespass after the Abatement; but if he brings an Assise, and the Defendant abates it pending the Writ, the Writ shall abate. 2 H. 4. 11. See 6 E. 2. Assise 454.

Parishioners may abate a Nufance levied in the Churchyard, though it has remained there twenty Years. So if the Plaintiff himself abates it pending the Writ, the Writ shall abate. 46 Ass. 9.



N And a Man shall have the like Writ, if a Man have a Way to (a) his Land or House, and another stop the Way, he shall have an Affise of Nufance for that Stopping; and if the Way be in one County, and the Land to which the Way is, in another County, then he shall have two Writs of Affise of Nufance, to each County one, and a Patent made to certain Persons, as is aforefaid; and the Form of the Writ is such:

*Rex, &c. Questus est nobis A. quod B. injuste & sine judicio arctavit quandam viam in B. in com' tuo, ad nocumentum liberi tenementi sui in C. in com' H. post primam, &c. & interim fac' 12. &c. videre viam & nomina, &c. Et sum', &c.*

And unto the Sheriſſ where the Land is to which the Way belongeth, the Writ is, *Quare arctavit quandam viam in B. in com' C. ad nocumentum libere tenementi sui in S. in com' tuo post primam, &c. Et ideo tibi precipimus, &c. videre tenement' & nomina eorum imbreu' & sum', &c. ad certos, &c. in consinio com' præd' quos idem, &c.* And the Patent is such:

*Rex dilectis, &c. Sciatis, &c. ad ass. capiend' quam, &c. per breviam nostr', &c. de quadam via arctat' in B. in com' Bedford ad nocumentum, &c. in C. in Comitatu Hunt' & ideo, &c. (ut supra).*

O And a Man shall have a Writ of Affise, *Quare injuste & sine judicio levavit vel prostravit quoddam fossatum in N. ad nocumentum liberi tenementi sui in N. vel levavit, vel prostravit, vel exaltavit, vel de-exaltavit quoddam stagnum, &c. vel obstruxit, vel arctavit quandam viam in N. ad nocument', &c. vel levavit, vel prostravit quandam sepem in N. ad nocument', &c. vel divert' cursum aquæ in N. ad nocument' liber' tenement' sui in B. post primam transfretat', &c. (ut in assisa de communia pasturæ usque ibi) de visu illo videre fossat' illud, stagnum illud, sepem illam, viam illam, cursum aque illius, & tenement' & nomin' eorum imbreviari & sum', &c. (ut supra in com' pasturæ) and the Form of the Patent is,*

*Rex dilectis, &c. Sciatis, &c. ad assisam capiend' quam A. &c. versus B. de quodam fossato levato vel prostrato in N. vel de quodam stagno exaltato vel deexaltato in N. vel de quodam stagno levato vel (b) prostrato in N. vel de quadam*

I i i 2

(a) So that it ought to be a Way appendant; for of a Way in Gross, he shall have only a Writ on his Case. 11 H. 4. 26. per Cur. and so of a Way to a Church because he has no Freehold in the Church. 4 E. 3. Nufance 8. but contra it seems as to a Way to a Church which one has *ratione Tenuræ*. *Quere*, if not an Action on the Case, or a Writ of Affise at his Election.

If a Way be so stopp'd, that the Party can pass, but narrowly, an Action on the Case lies; but if it be wholly stopp'd, an Affise. 14 H. 4. 31. See *Lib. Entr.* 616. Where a Tertenant plows my Way, I may have an Affise, but not Case, not even where it is wholly stopp'd. 2 H. 4. 10. 33 H. 6. 26. If the Tenant stops my Way Affise lies; if a Stranger does it, an Action on the Case only; and it seems that in an

Affise, or on a *Quod permittat*, you need only name the Tenant of the Freehold where the Stoppage is. See 1 H. 4. 83. If I have Common appendant lying beyond a Bridge which a Prior ought to repair *ratione Tenuræ*, and the Bridge falls for Want of Reparation, I shall not have an Affise of Nufance *Quare pontem prostravit*. (1.) Because there is no such Writ. (2.) Because here is only a Neglect, and for that an Action on the Case lies. So if A. ought to scour a Ditch, which he does not scour, whereby my Land is drowned, an Action on the Case only lies; but if he stops it up, an Affise of Nufance lies, per *Tbirning*. If a Stranger stops my Way, an Action on the Case lies; but if the Tertenant does it, an Affise. 22 H. 6. 15.

(b) Note; An Affise *de libera Tenementa* does

*quadam sepe levata vel prostrata in N. vel de quadam via arctata vel obsiructa in N. de cursu cujusdam aquæ diverso in N. Et ideo vobis mandamus, &c. (ut supra).*

And for what an Assise of Nufance lieth, appeareth by these Verses,

*fatum, num, s, a,  
Fos stag sepe vi diversi cursus aquarum,  
Poscunt assisam, mercatum, feria, bancum.*

*i. terminari coram Justic' assisar' i. placitari in Banco.*

22 H. 6. 14.

11 H. 4. 47.

And it appeareth by these Verses, to set up a Fair or a Market unto A the Nufance of (a) another Fair or Market, that he unto whose Nufance that Fair or Market is set up, shall have a Writ for so doing returnable into the King's Bench; and the Writ shall be in such Form:

*Rex Vic, &c. Si A. fecerit, &c. tunc sum', &c. P. quod sit coram Justic' nostris apud West', &c. ostens. quare levavit quoddam mercatum vel quandam feriam in I. ad nocumentum liberi mercati, vel liberae feriae ipsius A. in eadem villa, vel in alia post primam transfretationem, &c. ut dicit & habeas ibi sum' & hoc breve.*

There is also another Form of Writ for the same which is a *Quod permittat*, which is such:

*Rex Vic', &c. Præcipimus P. quod juste, &c. permittat Episcopum Linc' prosternere quoddam mercatum in Uppingham quod P. de M. pater prædict' P. cujus hæres ipse est, injuste, &c. levavit ad (b) nocument' liberi mercati C. nuper Episcopi Lincoln' prædecess. prædict' Episcopi in Luddington, ut dicit'*

&

does not lie of a Way. 34 Aff. 13. Vide supra.

*Note*; If one makes a Ditch, &c. cross a River which runs to my Mill, although the Ditch be made on his own Soil: It is in my Election to have an Assise of *Novel Disseisin* or of Nufance. 32 Aff. 2.

(a) *Note*; Case does not lie, nor an Assise of Nufance where it is *damnum sine injuria*, as for erecting a Mill near my Mill, where by I lose the Custom, &c. of the Inhabitants. 22 H. 6. 14. So for setting up a Grammar School. 11 H. 4. 47. But Case lies for setting up a Ferry, near an antient Ferry on the same River. 22 H. 6. 14. See for this *Bract.* 235. *Mercatum levatum non est injuriosum nec prosternendum si sit antiquius meo mer. ato.* (2.) If it be erected within the third Part of twenty Miles; viz. *unius Diata.* (3.) If set up for two or three Days at most, *meum Mercatum fuit vicinum.*

(b) See *Pasch.* 13 E. 3. *W. de Clynton* and C. his Wife, brought Nufance against A. for levying a Market in W. to the Nufance of their free Market in S. for that the said W. and C. in Right of the said C. had their Market every *Wednesday* in S. to which Market the Country People near used to come, &c. of whom the Plaintiffs

had Toll, &c. the Defendant levied a Market at W. to hold the same Day only two Miles from S. and that the Country People who used to come to S. do go to W. Pole defended the Tort, &c. and demanded the View, but it was not allowed; he also took Exception, for that they did not say their Market was elder; but not allowed; for it shall come by Way of Plea. (3.) Exception, for that C. had it only for Life, and so ought to have another Count, *non allocat.* wherefore he pleaded, That he had not levied any Market to the Nufance of their Market, and Issue was taken, and the Averment received by Award. *Note*; If the Market be on the same Day, it shall be intended a Nufance; but if it be on another Day, it shall not be so intended, and therefore it shall be put in Issue, whether it be a Nufance or not. 11 H. 4. 5. In a *Scire facias* for the K. to repeal a Patent. *Note*; A Market was granted to be in D. on *Saturdays*, two Miles distant from C. where the King had a Market on *Tuesdays.* *Note*; The Patent commonly is *ita quod non sit ad nocument'*; but if it be a Nufance, though it has not that Clause, the second Patent is void against him to whom it is a Nufance. 22 H. 6. 14.



*Et nisi fecerit, Et prædict' Episcop' fecerit te securum, Et. tunc sum' præd' P. quod sit, Et. ostens. quare, Et.*

And that Writ was granted by the Chief Justice and Clerks of the Chancery, by which it seemeth, that a Man may disturb another to have or keep any Fair or Market unto the Nufance of his Fair or Market.

Writs of Nufance which are Vicontiel.

**B** WRITS of Nufance which are Vicontiel, (a) are those which do appear by the Verses following,

*rica ca gultum ges lendinum  
Fab fur porta, domus, vir gur mo murus, ovile,  
Et pons, tradantur hæc vicecomitibus.*

And the Form of the Writ is such: *Rex Vic', Et. Quest' est nobis A. de B. quod B. (b) injuste levavit vel prostravit quandam dom' vel obstruxit quendam gurgitem in N. ad nocument', Et. in eadem villa vel in alia post prim' transfretationem, Et. in Vasc'. Et ideo tibi præcipimus, quod loquelam illam audias, Et postea eam inde injuste deduci fac' ne amplius inde clamorem audiamus pro defectu justitiæ.*

By the Statute of 6 R. 2. the Plaintiff may choose to have it before the Justices, or the Sheriff, Register 199.

**C** After the same Manner are Writs, *de ovili, porta, virgulto, molendino, Latrina, Et similibus levatis vel prostratis.* And those Writs may be removed at the Suit of the Plaintiff or Defendant, out of the County into the Common Pleas by a *Pone*, with Cause shewed in the Writ, as in a *Replevin* of his Cattle; and the *Pone* is such:

*Rex Vic', Et. Pone ad petitionem petentis loquelam quæ est in com' tuo per breve nostrum inter A. Et B. de quadam domo levat' vel prostrat' in C. per ipsum B. injuste levat', vel totalit' prostrat' ut dic' Et sum, Et. ut in pone de averiis.*

And the Rule in the Register is, that if he who erected or throweth down a House, Wall, or the like, dieth, that he to whose Nufance it is, or his Heir, shall have a *Quod permittat* against his Heir of him who did the Nufance, which Writs are amongst the Writs of *Quod permittat*.

**D** And a Man shall have an Affise of Nufance for building of a House higher than his House, and so near his, that the Rain which falleth upon that House, falleth upon the Plaintiff's House.

Register 199  
18 E. 3. 22.  
Nufance 1.

**E** (c) And a Man shall not have an Affise of Nufance of a Way, if it be not appendant or appurtenant to his Freehold; as if a Man build a House

4 E. 3. Fitz.  
Nufance 1.  
46 E. 3. 23-  
House

(a) See an Affise of Nufance, or an Action on the Case, lies for diverting *Majoris partis Cursus aquæ, Et.* Dyer 284. and yet one shall not have an Action on the Case for stopping of a Way; (*Quare*) but he may have an Affise of Nufance. Dyer 250.

(b) For levying of a Goss to intercept the Course of Fish coming from the Sea,

*usque ad Gurgitem meam superiorem.* 46 Aff. 9.

(c) But he shall have a Writ on the Case for such Way in Gross. 11 H. 4. 26. But by the better Opinion, the Writ shall not be *Quare levavit quandam Domum ad nocumentum liberi tenementi.* But *Quare obstruxit vel arc-tavit viam ad nocumentum, Et. Et quod Fur-ratores videant viam vel tenementum.* So if a Man

House over the Way which I have to my House, or to the Church, I shall have an Assise of Nuisance.

And in a Writ of Nuisance, the Defendant shall have the View, and shall be essoined; and if afterwards he makes Default, a Distress shall be awarded against him for to answer, &c. and not save his Default. *P.* 50 E. 3. 12. 42 E. 3. 9.

And if a Man levy a Nuisance unto the House of another who hath therein an Estate but for Term of Years, then he shall not have an Assise of Nuisance, but an Action upon the Case against him, because he hath no Freehold: But yet it seemeth he may enter and abate the Nuisance. *G*

[185.]

But his Lessee shall have, 13 H. 3. Fitz. Aff. 437.

And if a Writ of Nuisance be removed out of the County, and the Sheriff return, that the Defendant hath not any Thing, &c. the Party shall have Attachment, Distress, and no other Process, &c. because it toucheth Freehold. But in an Assise of Nuisance, the Process is as in Assise of *Novel Disseisin*. *A*

And the Parishioners may pull down a Wall which is set up to their Nuisance in their Way to the Church, *quod Vi. 6 E. 2.* *B*

And in an Assise of Nuisance he may in his Plea shew the Nuisance to be to diverse Freeholds. *C*

And if the Ways be straitened, or the Allies or Lanes in any Town, City or Borough Corporate be filled with Filth or Dung, or such Things by which Means Infection may increase, then he who will sue may procure such Writ to have them cleansed and made clean; and the Writ is such: *D*

*Rex Majori & Ballivis suis Oxon' salutem. Quia ex testimonio accepimus fide digno, quod per finos & fimaria, necnon porcarias, & frequent' access. porcorum, ac plures alias seditates, quæ in viis & venellis villæ prædictæ & suburb' ejusdem existunt, aer ibidem in tantum corrumpit' & inscit' quod magistris & Scholaribus in eadem commorant' & aliis ibidem conservantibus & transeuntibus horror abominabilis incutitur, commoditas salubris aeris impeditur, status hominum graviter læditur, aliæque intolerabiles incommoditates, & quamplurima discrimina ex corrupt' hujusmodi provenire noscunt' in magistror' & scholarium prædict' & aliorum ibidem conversant' & transeunt' nocument' & vitæ suæ periculum manifestum. Nos nolentes hujusmodi defectus enormes, & intolerabiles ibidem ulterius sustiner. Vobis præcipimus, quod omnes vicos & venellos in villa prædictæ & suburb' de finis & fimariis, ac aliis seditatibus prædict' mundari, & mundatos impofterum conservari sine dilat' aliqua faciatis, ne per corruptiones aut seditates prædict' damnum seu periculum aliquibus in vestri defect' eveniat in futurum, per quod ad vos tanquam ad mandati nostri contemptores graviter capere debeamus. Teste, &c.*

And upon that he shall have an Alias, a Pluries, and Attachment, if they do not cleanse them, &c. But for Villages in the County which are not corporate, such Writ doth not lie.

*Writ*

Man builds a House cross a Watercourse to a Mill, the Writ shall be *Quod divertit Cursum aque ad nocumentum, &c.* Quære if

the Writ may not be *Quod Demum levavit ad nocumentum liberi tenementi.* 11 H. 4. 25.



*Writ de Association in Assise, and of Writs de si non omnes.*

**E** A Writ of Association is a Patent made to one or more, when an Assise of *Novel Disseisin*, or Certificate upon Assise of *Novel Disseisin* is sued. Then the King of his own Motion, or the Plaintiff may sue to have other Persons associated unto the Justices of Assise to take that Assise; and the Form of the Writ or Patent is such:

entred of Record, and remains with the Justices for their Warrant to take other Assises; and the Special *Si non omnes* is annexed to the Record, and sent as Parcel.

16 Ass. 6.  
Assise 206.  
Note, there is one *Si non omnes* general, which is

*Rex dilectis & fidelibus suis C. & D. Vel dilecto & fidei suo F. salut'. Sciatis quod associavimus vos vel alterum vestrum, vel vos dilect' & fidelibus nostris A. B. & G. ad ass. novæ diff. capiend' quam F. arrainavit coram præf. A. B. & G. per breve nostrum versus H. de ten' in N. ita tamen quod si ad certos diem & locum quos iidem A. B. & G. ad hoc providerint vel alterum vestrum vel vos adesse contigerit, tunc vos vel alterum vestrum vel vos ad hoc in socios vel in socium admittant, alioquin iidem A. B. & G. non expectata præsentia vestra vel alterius vestr' vel vestra, ad caption' illius ass. procedant. Et ideo vobis mandamus quod vos vel alter vestr' vel vos captioni ass. illius una cum præf. A. B. & G. intendat' in forma prædict' fac' inde quod ad justitiam pertinet' secundum legem & cons. regni nostri; salvis nobis amerciamentis inde provenient. Mandam' enim eisdem A. B. & G. quod vos vel alterum vestrum vel vos ad hoc in socios vel in socium admittant, sicut præd' est. In cujus rei testim' has literas, &c.*

(a) And upon that Patent of Association the King shall send his Writ unto the Justices of Assise, commanding them thereby to admit him or them, &c. And the Writ is such:

See for the Exposition of (alter) Dyer 310, 338.  
L. 5 E. 4. 11.  
Br. Assise 386.

*Rex dilect' & fidelibus suis A. B. & G. salut'. Sciatis quod associavimus vobis dilect' & fideles nostros G. & D. vel alterum ipsorum: Vel sic; dilect' & fidelem nostrum F. ad ass. novæ diff. capiendum quod E. arrainavit coram vobis per breve nostrum versus H. & alios in brevi nostro originali content' de tenement' in N. vel de commun' pasturæ in N. ita tamen quod si ad certos diem & locum, quos ad hoc provideritis, ipsos C. & D. vel alterum ipsorum: Vel sic; ipsum F. ad hoc in socios vel in socium admitt', alioquin vos non expectata præsentia eorum C. & D. vel alterius ipsorum: (b) Vel sic; vel ipsius F. ad captionem illius ass. procedat. Et ideo vobis mandamus, quod ipsos C. & D. vel alterum ipsorum: Vel sic; vel ipsum F. ad hoc in socios vel in socium admitt' in form' prædict'. Mandavimus enim eisd' C. & D.*

(a) Note; 'The Justices may refuse to admit the Associate, except the Writ be directed to them. 5 E. 4. Ass. 459.

(b) Vel sic; *Aliquis singulis vicib' quibus C. & D. abesse contigerit, &c.*

D. quod ipsi vel eorum alt': Vel sic; vel idem F. quod una vobiscum ad hoc intendat vel intendant, sicut præd' est. Teste, &c.

And if several Assises, or Certificates of Assises be sued before several Justices in one County for Lands, Tenements, Rents or Commons, and afterwards the King maketh new Justices to take all Assises or Certificates, and juries which are to be taken in the same County, the King may make an Association to the Justices new assigned; thus:

[186.]

Rex dilect' & fidel' suis W. de D. R. de A. & R. de P. salut'. Sciatis quod cum constituerimus vos Justic' nostros ad omnes ass. jurat' & certif. coram quibuscunque Just' nostris per breviam nostram in comitat' Linc' arrainatas capiend'. Et postmod' vobis mandaverimus, quod si vos omnes cap' ass. jurat' & certif. prædict' commode interesse non possitis, tunc duo vestrum quos præsentibus esse contigerit, ad captionem earundem ass. juratarum, & certif. secund' legem & consuetud' regni nostri procederitis, associavimus vobis dilect' & fidel' nostr' A. ad ass. juratas & certif. prædict' una vobisc' capiend', ita tamen quod si ad cert' dies & loca, quos vos vel duo vestr' ad hoc provideritis, ipsum A. adesse contigerit, tunc vos vel duo vestrum ipsum A. in socium admittat', alioquin vos vel duo vestrum non expectat' præsentia ipsius A. ad captionem ass. juratarum & certif. præd' procedatis, & ideo, &c. mandamus, &c.

And a Patent made to him who shall be Associate, reciting the Patent made to the Justices, and the Writ of *Si non omnes*, and then shall say, *Associavimus vos*, &c. And the Form of the Writ is such:

Rex dilect' & fidel' suo A. salut'. Sciatis quod cum constituerimus dilect' & fidel' nostros W. de D. R. de R. & R. de P. Just' nostros ad omnes ass. jurat' & certif. quorum quibuscunque Justiciar' nostris per breviam nostram in com' Linc' arrain' capiend' & postmod' eisdem W. de D. R. & R. mandavimus quod si ipsi omnes captioni ass. jurat' & certif. prædict' commode interesse non possint, tunc duo eorum, quos tunc adesse contigerit ad captionem earundem ass. jurat' & certif. secund' legem & consuet' regni nostri procederent, associavimus vos præfat' W. R. & R. & duobus eorum ad ass. jurat' & certif. prædict' in com' prædict' capiend', ita tamen quod si ad certos dies & loca quos iidem W. R. & R. vel duo eorum ad hoc providerint, vos adesse contigerit, tunc ipsi vel duo eorum vos ad hoc in socium admittant, alioquin iidem W. R. & R. vel duo eorum non expectata præsentia eorum, ad captionem earundem ass. jurat' & certif. prædict' proced', & ideo vobis mandam' quod captionem ass. jur' & certif. præd' una cum præf. W. R. & R. vel duobus eor' intendatis in form' prædict' facturi, &c. salvo, &c. Mandamus etiam eisdem W. R. & R. quod ipsi vel duo eor' vos ad hoc in socium admittant, sicut prædict' est. In cujus rei, &c. has literas nostras fieri fecimus paten'. Teste, &c.

L. 5 E. 4.

III. Br. Ass.  
386.

And afterwards when the King hath made his Justices of Assise by A Letters Patent; and by other Letters Patent hath associated unto them another Person, yet he is used afterwards to make other Letters Patent, as well unto the Justices of Assise, as to those whom he hath associated unto them, that if they all do not come at one Time, to take those Assises, Juries, and Certificates, that then those who do come shall take the same Assises, Juries and Certificates: And that Patent is called a *Si non omnes*; and the Form of the Patent is such:

Rex



*Rex dilectis & fidel' suis W. de D. R. de A. & R. de P. & A. de B. salut'. Cum constituerimus vos præf. W. R. & R. Justiciar' nostros ad omnes ass. &c. (usque ibi) arrain' capiend' & postmod' vobis præf. W. R. & R. monstraverimus, quod si vos omnes, &c. procederitis subsequen', quod associavimus vobis & duobus vestrum præf. A. ad ass. jurat' & certific' præd' in com' præd' capiend', vobis mandam' quod si vos omnes captioni ass. jurat' & certific' prædici' commodè interesse non possitis, tunc tres vel duo vestrum, quorum alterum vestrum vos præf. W. R. & R. unum esse volumus, ad captionem earund' ass. &c. secundum legem & cons. regni nostri procedatis, &c. Teste, &c.*

- B** And these three Patents next before are commonly made when any Assise is sued; as one to the Justices of Assises, and another Patent to the Clerk of the Assises of Association, and the Patent of *Si non omnes*, as well made to the Justices and the Clerk of the Assises together.
- C** (a) And if the King make his Justices of Assise in any County, and afterwards he maketh an Association to them, and a Patent of *Si non omnes*, 32 H. 6. 10. &c. And afterwards divers Assises or Certificates of Assise remain before them not determined: The King at the next Assises may make a new Commission unto other Justices to take all those Assises and Certificates, and may make a new Association unto them by another Patent, and a *Si non omnes* also directed unto them.
- D** But a general Patent of Assise to take all Assises and Juries, &c. and Association lieth. But *M. 32 H. 6.* it is holden, that an Association after another Association allowed and admitted doth not lie, nor that the Justices then do not admit other Association in that Writ afterwards, so long as that Writ and Commission stand in Force. 32 H. 6. 10. L. 5 E. 4. Br. Assise 386.
- E** But in a special Assise no Association shall be made as it is holden the same Year. *M. 32 H. 6.* for he hath not in the Writ these Words, *Et his quos sibi associavimus*. But the Writ is directed to the Sheriff without those Words in the Writ, nor those Words are not in the Patent made to the Justices of that special Assise.
- F** But if those Words be in the Writ, and in the Patent made to the Justices, then it seemeth an Association shall be made in that special Assise, as in other. And it appeareth in the Register that the other Association lieth after Association in one Writ.
- G** And upon a new Commission made to other Justices, that the old Justices of Assise shall deliver their Records of the Assise unto the new Justices by Indenture, upon a Writ directed to them to deliver the Records.
- H** And a Man may sue a Patent of Association for several Assises; and the Form of the Writ is such:

K k k

Associa-

(a) See L. 5 E. 4. 129, 137. these Points resolved; viz. (1.) That an Association may be on a special Assise, by a special Patent. (2.) That by the Writ of Admittance he is not Justice, (Associate) without shewing also the Patent of Association. (3.) That by the Patent of Association he

is Justice, though there be no Writ of Admittance. (4.) Though the Words of the Patent of Association shall be only *ad Assisam hac vice capiendam*; yet his Power remains till the Assise be determined, although it depend through divers Adjournments.

[187.]

*Associavimus vos, vel alterum vestrum, &c. ad Ass. no' diff. capiend' quam A. arrainavit cor' præf. &c. de tenementis in N. & ad ass. no' diff. capiend' quam C. arrain' cor' eisd' &c. versus præf. B. de tenementis in eadem villa. Ita tamen quod si, &c.*

And if the King make two Men his Justices of Assise in one County, A and afterwards one of them is elsewhere in the King's Service, (a) so that he cannot intend to take those Assises or Juries, then the King by Patent may make another Justice in his Room, to take those Assises and Juries, and that Patent is in the Nature of an Association; and the Form of the Writ is such:

*Rex dilecto & fideli suo A. salut'. Sciatis quod cum nuper constituer' vos & dilect' & fidelem nostrum G. Just' nostr' ad omnes ass. juratas, & certific' cor' quibuscunque Justiciar' nostris per breviam nostra in Comitatu L. arrain' capiend', ac præf. G. quibusd' obsequiis nostris de mandato nostro alibi intendat, per quod captioni earund' assisar', juratar' & certificat' vacare non potest, ut accepimus, loco ipsius G. constituim' dilect' & fidel' nostr' W. Justic' nostr' ad assisas, juratas, & certific' prædict' una vobisc' capiend'. Et ideo vobis mandamus, quod ipsum W. loco ipsius G. ad hoc in socium admittatis in forma prædict', Mandamus enim eidem W. quod loco ipsius G. una vobiscum ad hoc intendat, &c.*

Yet he is  
Judge before  
they admit  
him, by  
Markham,  
L. 5 E. 4. 111.  
Br. Ass. 386.

And a Patent shall be made to him who shall be associate unto them in the Place of G. which shall be such:

*Rex dilecto & fideli suo W. salutem. Sciatis quod cum nuper constituimus dilectos & fideles nostros A. & G. Justic' nostros ad omnes ass. &c. (ut supra usque ibi) ut accepimus, loco ipsius G. constituimus vos Justic' nostr' ad ass. jurat' & certific' præd' una cum præf. A. capiend'. Et ideo vobis mandamus, quod loco ipsius G. cum præf. A. ad hoc intendat' in forma præd' facturi, &c. salvo, &c. Mandavimus enim eidem R. quod vos loco ipsius G. ad hoc in socium admittat, sicut præd' est. In cujus, &c.*

And if the King make three Justices in Assise, and afterwards one of B them dieth, the King may make a new Patent of Association unto another to associate him and the two in the Room of him who is dead, and a close Writ shall be directed to the two Justices who are alive to admit him, &c. and it appeareth by the Writ, that if the King maketh three Justices to take Assises, and make them a Patent of *Si non omnes*, that if one of them dieth, yet the other two may proceed; and the Patent is such:

L. 5 E. 4. 111.  
Br. Ass. 286.

*Rex dilecto & fideli suo I. de O. salutem. Sciatis quod cum nuper constituerimus dilectos & fideles nostros I. I. & S. Justic' nostr' ad omnes ass. jurat' & certific' coram quibuscunque Justic' nostr' per breviam nostra in comitatu S. &c. arrain' capiend', ac post mortem prædict' S. divers. ass. jurat' & certific' coram præfat' I. & I. arrain' existant, nos certis de causis constituimus vos Justic' nostr' tam ad omnes ass. jurat' & certific' coram præd' I. I. & S. & postmod' coram eisdem I. & I. quam ante coram quibuscunque Justic' nostr' in com' præd' arrain' una cum eisdem I. & I. capiend'. Et ideo vobis mandamus, quod*

*ad*

(a) Or be dead; and note; A Justice of Assise cannot record a Nonsuit. 45 Ass. 3. Where one is made a Justice ad omnes Assisas capiend', it is good; and such may

take the Assises without any Re-attachment sued, altho' the Assise be removed. 28 Ass. 2.



*ad ass. jurat' & certific' una cum præfat' I. & I. capiend' attendat' in forma præd' fact', &c. salvis, &c. Mandamus enim præd' I. & I. quod vos ad hoc in socium admitt' sicut præd' est.*

C And a close Writ shall be directed to the Justices to admit the said Justice *W.* into their Society.

And the King may make Association in Juries as well as in Assises, as also in Attaints. And if the King make a Commission to take an Attaint or other Jury, and an Association in the same, and after one of the Justices dieth, the King may make a new Association in the same Writ, and so he may make one Association after another in the same Writ, as appeareth by the Register; and the Writ is such:

*Rex dilect' &c. I. de M. R. de M. & I. de F. salutem. Cum nuper constituissimus W. de O. & vos præfat' I. de M. & R. Justic' nostr' ad jurat' milit' capiend' quam R. arrain' coram præfat' W. & vobis præf. I. de M. & R. per breve nostr' versus P. ad convincend' jurator' ass. no' diff. quæ inter ipsum P. & præf. R. sum' fuit, & capta per breve nostrum apud H. coram præf. W. & vobis præf. R. de tenem' in S. in com' N. & postmodo per breve nostr' associaver' vobis præf. I. de M. & R. vos præf. I. de F. ad omnes ass. jurat', &c. in dicto com' arrain' una cum præf. W. & vobis cum præf. I. de M. & R. vel duobus vestrum cap', & jurat' ill' coram præf. W. & vobis præf. R. & I. de F. virtute association' prædict' usque ad caption' ejusdem extiterit per placitat', ac idem W. jam diem clausit extrem', loco ipsius W. constituimus dilect' & fidel' nostr' B. ad jurat' illam una vobiscum capiend'. Vobis mandamus, quod præf. B. loco ipsius W. ad hoc admittat' & ad jurat' illam capiend' una cum ipso procedatis, secundum legem & consuetudinem regni nostr', Mandamus enim præf. B. quod una vobiscum ad hoc intend' sicut prædictum est.*

And thereupon another Patent shall be made to the said *B.* of Association, as before in other Cases.

D And an Association may be made unto the Sheriff upon a Writ of Redisseisin directed to him as well as it may be upon an Assise of *No-vel Disseisin*, as appeareth by the Register; which Writ was awarded by *W. de Harloston*.

A And although the Assise be discontinued for not coming of the Justices, &c. yet when the Re-attachment is sued, the Writs of Association, and of *Si non omnes* stand in Force; and a Re-attachment shall or may be sued to revive those Assises, (a) although there be several Adjournments of the Assises, yet the Associations and Writs of *Si non omnes* shall serve for all the Assises.

Furby 2 H.  
4. 2. he is  
Officer,  
Judge and  
Commission-  
er in this  
Writ.

[188.]  
12 H. 4. 19, 20.  
L. 5 E. 4. 111.  
Br. Assise 386.  
14 Ass. 15.  
Br. Ass. 196.

K k k 2

Writ

(a) See it accordingly adjudged. 12 H. 4. 19, 20. 22. 14 Ass. 14. be the Association in general, or the Assise taken by special Adjournments.

## Writ of Redisseisin.

**T**HE Writ of Redisseisin (a) lieth where a Man doth recover by **R** Affise of *Novel Disseisin*, Land, Rent or Common, and the like, and is put in Possession thereof by Verdict, and afterwards he is disseised of the same Land, Rent or Common by him by whom he was disseised before. Then he shall have this Writ upon the Statute of *Merton*, c. 3. and the Form of the Writ is such:

23 Aff. 7.

*Rex Vic' &c. Monstraver' nobis A. & B. uxor ejus, quod cum R. quond' vir ipsius B. & ipsa B. in Curia nostra coram Justic' nostr' ultimo itinerantibus apud N. in Comitatu tuo. Vel sic; coram dilect' & fidelib' nostr' H. & K. Justic' nostr' ad ass. in Comitatu prædict' capiend' assign' apud. Vel sic; si Justic' mort' fuer' coram H. & sociis suis nuper Justic' nostr' ad assis. in Comitatu prædict' capiend' assign' apud N. recuperassent seisin' suam versus S. de vigint' acr' terræ, & decem solidat' reddit' cum pertin' in K. per recognit' Assise novæ diff. inter eos, &c. Vel sic; inter præf. A. B. & S. capt', præfat' S. ipsos A. & B. de prædict' terra & redditu. Vel sic; de una acra terræ de terra prædict' iterum injuste disseisivit: Et ideo tibi præcipimus, quod assumpt' tecum (b) custodib' placitorum coronæ nostræ & 12 tam militib' quam aliis liberis & legalib' hominib' de Comitatu tuo tam de illis qui in prima jurata fuer' quam aliis, in propria persona tua acced' ad prædict' terram & tenementum, unde reddit' inde provenit, & per eorum sacramentum diligent' inde fac' inquisit'. Et si ipsos A. & B. per præfat' S. de prædict' terra & redditu iterum injuste disseisitos inveneris, tunc ipsum S. capias & in prisona nostra salvo custodiri fac', ita quod a prisona illa nullo modo deliberetur sine mandato nostro speciali: Et ipsos A. & B. de prædict' terra, & redditu re-seisir', & damna sua in duplum, quæ occasione illius redisseis. sustinuer', per sacramentum prædict' 12. taxari, & de terris & catall' prædict' S. in balliva tua sine dilatione fier' & eisdem A. & B. habere fac' juxta formam Statuti de hujusmodi redisseis. provis. (c) Et scire fac' præf. S. & D. qui terram illam nunc tenet, quod inquisit' ill' faciend' interfit, si sibi viderit expedire. Teste, &c.*

And

(a) If he distrains for the Rent, he shall have a Redisseisin on a Rescous made, without any other Seisin. 40 Aff. 23.

(b) 23 Aff. 7. If there be but one Coroner in the County, he may make it, otherwise all must join. 20 H. 6. 17. And note; A Redisseisin taken before the Sheriff and one Coroner is not good. Also note this Clause, *assumptis tecum*, &c. was omitted, and therefore the Writ abated. 26 E. 3. 57. and herein the Sheriff is Judge. 1 H. 4. 5. but if there are four Coroners, but one is dead, the Sheriff ought to return this. It seems, that if the Writ be

*accedas ad Villam ubi Tenementa prædicta sunt*, &c. it is erroneous. 11 H. 4. 6, 94. adjudged. But if the Rent issues out of more (many) Lands in divers Vills, it is sufficient to take the Redisseisin in one Vill only. 40 Aff. 23. but the View ought to be made of all.

(c) See 9 H. 4. 5. Note; The Sheriff is Judge here, and therefore it seems the Array is not challengeable, but the Panel is; and it seems that the Sheriff may receive Pleas herein as a Release, &c. *Kelw.* 125. 40 Aff. 23.



- D And by that Writ appeareth, That a Man shall have a Redisseisin against the Tenant, if he recover by Assise of *Novel Disseisin* before Justices in Eyre, or before Justices of Assise; (a) and so if he recover in Assise of *Novel Disseisin* in the King's Bench or Common Pleas, if he be redisseised, he shall have that Writ.
- E If Husband and Wife be disseised, and recover by Assise, and the Husband dieth, and the Wife taketh another Husband, and they be disseised again, by the Register they shall have a Writ of Redisseisin, although the Husband were not disseised before; and the Writ willeth that the Sheriff enquire whether they were disseised before, and so the Husband was not; but that is not material, because it is the Right (b) of the Wife, and she was disseised before. But if the Wife lose in the Assise of *Novel Disseisin* and afterwards take Husband, and they redisseise the Plaintiff, he shall not have a Writ of Redisseisin; *quod vi* H. 9 H. 4. 1 Inst. 154. b.  
9 H. 4. 5.
- F (c) And also a Redisseisin lieth against him who committed the Redisseisin, and against another who was not Disseisor, if he be Tenant of the Land.
- G And also if a Man recover Land by Assise of *Novel Disseisin* and after is redisseised of Parcel of the same, he shall have a Writ of Redisseisin.
- H And in a Redisseisin against Husband and Wife, the Writ shall be thus in the End. *Et idem A. damna sua in duplum quæ occasione illius rediss. sustinuit de terris ipsorum B. & S. & catallis ipsius B. in ball' tua,* because the Wife hath not any Chattel.
- I And if the Sheriff will not execute the Writ of Redisseisin, he shall have an *Alias* and a *Pluries* directed to him, and if he then do it not, he shall have an Attachment against him to the Coroners, &c. and upon the same, Distress infinite.
- K And it appeareth in the Register, that a Man shall have a Writ of Association in a Redisseisin; and the Writ is such:  
*Rex Vic', &c. Sciatis quod cum nuper ad prosecut' N. nobis suggerent' ipsum in Curia nostra coram, &c. apud K. per breve nostrum recuperas. seisinam suam versus S. &c. recitando totum breve (usque ibi) si sibi viderit expedire, associavimus tibi dilect' & fidel' nostrum R. ad præmis. tecum faciend' & explend'; ita tamen, quod si ad cert' diem quam ad hoc provideritis, ipsum K. ades. contigerit, tunc ipsum ad hoc in socium admitt' alioquin tu non expectata præsentia ipsius R. ad præmis. faciend' & explend' proced'. Et ideo tibi præcip' quod ipsum R. ad hoc in socium admitt', in forma prædict', Mandavimus enim eidem R. quod ad præmis. tecum faciend' & explend' intend' sicut prædictum est.*

And

(a) See 26 E. 3. 57. A Writ of Redisseisin granted on a Recovery in B. R. sued in Chancery, and held good by the Award of Court.

(b) See 9 H. 4. 5. And it seems one may have a special Writ supposing that the Wife *dum sola* was redisseised; but not that the Husband and Wife redisseised. *Quare post.*

191. it seems no Law; and that the Wife only shall be taken.

(c) If one recovers in an Assise and is redisseised by the Disseisor, another Redisseisin lies, *per Thirning.* 9 H. 4. 5. for Jointenancy is a good Plea in a Redisseisin, 33 E. 3. *Redisseisin* 7. And note this Judgment in Redisseisin, *Quod recuperet seisinam suam.* Rast. Entr. 548.

And by the Register, the Writ directed to the Sheriff shall be close, as also the other Writ directed unto him who is associated to him, and yet the same is in its Nature a Patent.

And if a Man recover by Assise of *Novel Disseisin*, Common of Pasture, L or other Profit apprender in the Soil of another, or any Office, or Corrody; if he be redisseised, he shall have a Redisseisin; and the Writ shall be such:

[189.]

*Rex Vic', &c. Monstravit nobis A. quod cum ipse in Curia nostra coram dilect' & fidel' nostr' W. & sociis suis Justic' nostr' ad assis. &c. assign' apud N. per breve nostrum recuperasset seisinam suam versus I. de communia pastur' in S. quæ pertinet ad liberum tenementum suum in eadem villa, per recogn' assis. novæ diff. ibi inde inter eos capt' prædict' I. præf. A. de præd' communia iterum injuste disseisivit. Et ideo, &c. acced' ad pasturam illam & per eorum sacramentum, &c. de rationabil' estover' sic recuperasset seisin' suam versus I. de rationabil' estover' suis capiend' in tribus millib' acr' bosci cum pertin' in W. quæ pertinent ad liberum tenement' suum in eadem per recogn' assis. &c.*

And if a Man recover by Assise of *Novel Disseisin*, any Land or Tenement before the Bailiffs of any Liberty, where they demand Conu- A fance of Pleas before Justices of Assise, and the Justices grant the same, because the Lands are within that Liberty, and afterwards he be redisseised of the same Land, then he shall have a Writ of Redisseisin; and the Writ shall be such:

*Rex Vic', Berks salutem. Monstravit nob' A. quod cum ipse nuper arrainas. quandam assis. diff. cor' dilect' & fidelib' nostris I. & sociis, &c. assign' per breve nostr' versus P. de duobus pedibus terræ in longitudine, & uno pede terræ in latitudine cum pertin' in W. quæ quidem assisa per eosd' Justic' in Cur' Abbat' de Reading juxta libertates eidem Abbati per cartas progenitorum nostror' quondam regum Angliæ & confirmat' nostram concess. cor' ball' ejusd' Abbat' returnata fuit placitand', ac idem A. seisinam suam de terra prædict' versus præf. E. in ead' cur' recuperasset per recogn' ass. no' diff. ibi inter eos capt. præf. E. ipsum A. de præd', &c. iterum, &c. ut in primo brevi.*

And also a Man shall have a Redisseisin upon a Recovery in Assise of Nusance, *de stagno injuste levat', &c. or de cursu aquæ diverso, or de via arctata & obstructa*; and the Form of the Writ is such:

*Rex Vic', &c. Monstravit nobis A. &c. (usque ibi) assign' arrainaver' quandam assisam versus B. per breve nostrum de quodam stagno injuste levato in N. ad nocumentum liberi tenementi sui in K. & per recognit' ejusdem assise inde inter eos apud E. capt' coram eisdem Justic' distracionavit stagnum illud per præf. B. levatum esse prosternend', prædict' B. stagnum illud iterum injuste & sine judicio levavit: Et quia hoc injustum est & manifestum contra pacem nostram: Tibi præcipimus, quod assumptis tecum, &c. (usque ibi) accedas ad stagnum illud & tenementum, & per eorum sacramentum diligenter inde fac' inquisition'. Et si per inquisitionem illam inveneris quod prædict' stagnum illud iterum injuste levaverit, tunc ipsum B. capias, &c. (usque ibi) speciali, & stagnum illud sine dilatione prosterni, & eidem A. damna sua ad duplum, quæ occasione illius redisseisin' sustinuit, &c. (usque ibi) sine dilatione fieri habere fac' juxta formam, &c. ut supra.*

And



- C** And the like Writs are in the Register of Redisseisin, for the Mis- Ant. 66.  
turning of a Mill, or of a Way, or of an Office, and the like.  
And if the Sheriff do deliver any such, without the special Command  
of the King, who are convict of such Redisseisins, he shall be grievously  
amerced, and notwithstanding those who are so delivered, shall be also  
grievously punished, &c. by the Statute of *Marlebridge*, cap. 8.  
And by the Statute of *Westm. 2. cap. 26.* he who recovereth in a Re-  
disseisin, shall recover double Damages; and the Defendants shall not  
be bailed by a common Writ; and by the same Statute is given a Writ  
of Post-Disseisin, in which Writ he shall also recover double Damages  
against the Defendant.
- D** And if a Man do recover by Redisseisin, and afterwards is disseised  
again by him by whom the first Redisseisin was before, he shall have a  
new Redisseisin; and so one Redisseisin after another every Time he is  
redisseised.
- E** And a Redisseisin shall be maintainable against any of the Disseisors.
- F** And if a Man recover Land by Assise of *Novel Disseisin*, unto which 1 Inst. 154. b.  
a Common is appendant, &c. and after he is disseised of the Common 8 E. 3. Rediss.  
again, he shall have a Redisseisin, &c. 6.
- G** And if a Man sue a Writ of *Droit Close*, and make Protestation in  
the Nature of Assise of *Novel Disseisin*, and recover in that Writ, and  
after he is redisseised, he shall not have a Redisseisin; for that Writ  
doth not lie upon an Assise at the Common Law. *M. 14 E. 3.* 1 Inst. 154. a.
- H** And if all the Jurors in the Assise be dead but one, and afterwards he  
who recovered is redisseised, &c. it is a Question whether he shall have  
a Redisseisin, because that the Statute is *Per primos Juratores & alios*, &c. 27 Ass. 7.  
which see debated in *H. 8. 5.* But it seemeth that the Statute makes 1 Inst. 154. a.  
the Law, and because it is a penal Statute, it shall be taken strictly;  
and therefore if all the Jurors be dead but one, that he shall not have  
a Redisseisin, because he cannot be tried by the former Jurors; for one  
Juror is not a sufficient Witness himself, to say that it is a Redisseisin of  
the same Tenements; and therefore it seemeth there ought to be two  
Jurors to testify the same.
- I** And Tenant by Statute Merchant or Staple shall have an Assise of 8 H. 5. 1. per  
*Novel Disseisin* if he be ousted; and also a Redisseisin if he be redisseised. Pole contr.  
And so Tenant by *Elegit* shall have an Assise of *Novel Diss.* and a Re- Hankf. in  
disseisin if he be ousted, by the Statute of *Westm. 2. c. 18.* Error.

Writ of Post-Disseisin.

[190.]

- A** **T**HE Writ of Post-Disseisin is given by the Statute of *Westm. 2. c.*  
*26.* and lieth where a Man recovereth Lands or Tenements by a  
*Præcipe quod reddat*, by Default or Reddition, and afterwards he is oust-  
ed again by him against whom he recovered, &c. Then he shall have  
that Writ of Post-Disseisin, and shall recover double Damages, and the  
Party

Party shall be punished as he shall be if he were attainted of Redisseisin: But if he recover by Assise of Mortdauncestor or *Juris utrum*, or in those Actions which pass by Juries and Verdicts, then he shall have his Writ founded upon the Statute of *Merton*, c. 3. of Post-Disseisin. And that Writ shall be directed to the Sheriff as the Writ of Redisseisin shall be; and if the Sheriff will not execute the Writ as he ought to do, and as he is commanded, then he may sue forth an *Alias* and a *Pluries*, *vel causam nobis significes*, &c. And if that do not any Thing, nor he return a Cause, then the Party may sue an Attachment against the Sheriff directed to the Coroners, &c. and upon that a Distress; and the Form of the Writ of Post-Disseisin is such:

*Rex Vic', &c. Monstravit nobis A. quod cum ipse in curia nostra coram dilectis & fidelibus nostris W. & sociis suis Justic' nostris de banco apud E. per breve nostrum recuperasset seisinam suam versus I. de uno mesuag' cum pertin' in S. per considerationem ejusdem cur', idem I. prefat' A. de predicta terra postmodo injuste disseis. Et ideo tibi precipimus quod assumptis, &c. (ut in brevi de rediss. &c.) legalibus hominibus de Com' tuo accedas, &c. (usque ibi) de predicta terra postmodo injuste disseisit' inveneris, tunc ipsum I. &c. (usque ibi) quæ occasione illius post disseis. sustinuit, &c. juxta formam statuti West' de hujusmodi post-disseisinis provisi, & scire fac' prefat' I. quod inquisitio, &c.*

And in a Post-Disseisin the Writ shall not say, *Tam de illis qui in prima jurata*, but in Case where he recovereth by Recognisance of the Assise or Jury.

3 R. 2. Br. 9. And if a Man recover Lands or Tenements in Value against the Vouchee in a *Præcipe quod reddat* by Default, and afterwards that he is put in Execution by the Sheriff, the Vouchee do disseise him of the same Lands which he so recovered in Value, he shall have a Post-Disseisin of that Land so recovered in Value against the Vouchee. And the Writ is such:

*Rex Vic', &c. Monstravit nobis C. quod cum B. Prior de D. nuper in curia nostra coram dilect' & fidel' nostris R. F. & sociis suis Justiciar' nostris de banco apud Westmonasterium per breve petivisset versus pref. C. septem acr' prati cum pertin' in I. idemque C. R. de S. inde placito predict' vocasset ad warrant', ac per defaultam, quam idem R. postea fecit in eadem Cur' considerat' fuisset, quod predict' Prior recuperaret seisinam suam versus prefat' C. de predict' placito, quod idem C. haberet de prato predict' R. de S. ad valenciam predict' Sept' acr' prati, cujus quidem considerationis pretextu septem acr' prati cum pertin' de prato predict' R. de S. in G. pref. C. per tunc Vic' nostrum Glouc' virtute cujusd' brevis nostri de judic' sibi in hac parte directi assign' fuer', predict' R. de S. prefat' C. de predicto prato sibi (ut præmittitur) assignat' postmodum injuste disseisivit. Et ideo tibi precipimus, quod assumptis tecum, &c. 12. tam militibus quam aliis liberis & legalibus hominibus de Com' tuo, in propria, &c. accedas ad predict' pratum eidem C. assign', & per eorum sacram' diligenter inde fac' inquisit'. Et si ipsum C. per predict' R. de predict' prato prefat' C. assign' postmodum injuste disseis. inveneris, tunc ipsum R. capias & in prisona nostra salvo custodire fac' ita quod a prisona illa nullo modo deliberetur sine mandato nostro speciali,*



*speciali, & ipsum C. de prædict' prato sibi assign' reseisiri, & damna sua in duplum, quæ occasione illius post-dis. sustinuit, per sacrament' prædict' 12. taxari, & de terris & catallis prædicti R. in balliva tua sine dilatione fieri, & eidem C. habere fac' juxta formam statuti de hujusmodi Post-disseisin' provis. Et scire fac' præfat' R. &c. Teste, &c.*

**D** And if the Defendant make the Default at the *Scire facias* returned, <sup>15 H. 7. 8.</sup> then the Sheriff shall take the Inquest by Default, and the Process against the Jury shall be by Precept from the Sheriff to his Bailiff, &c. to summon twelve, &c.

**E** And if a Man recover in a *Scire facias* upon a Fine, or upon a Recovery had before by Default of the Tenant, he shall have a Post-Disseisin. against the Tenant, if he be afterwards ousted of the same Land; *quod vi. M. 15 H. 7.*

**F** And if a Man be convicted before the Sheriff, upon a Redisseisin, and <sup>2 Inst. 115.</sup> Post-Disseisin. then he shall not be delivered out of Prison without the King's special Command, and then he ought to sue a *Certiorari* to remove the Record into the King's Bench, and there to agree with the King for his Fine. And thereupon he shall have a Writ to the Sheriff to deliver him out of Prison; and the Form of the Writ to remove the Record is such:

*Rex Vic', &c. Ex parte Henrici de D. capti & detent' in prisona nostra Staff. pro quadam redisseisina per ipsum Isabell', quæ fuit uxor Ric' de C. de medietate unius messuag' cum pertiñ' in C. fact' ut dic' unde coram te & custod' placitor' coron' nostræ in Com' tuo per inquisitionem inde apud C. per breve nostrum fact' convict' fuit: Nobis est supplicat' ut cum ipse eidem Isabell' de damn' sibi in hac parte adjudicat' jam sit satisfact' & parat' sit nobiscum finem pro eo quod ad nos pertinet in hac parte, juxta formam statuti de communi concilio regni nostri inde provis. facere: Velimus ipsius deliberationi provider' nos ut eidem H. quod justum fuerit inde facere valeamus, volent' super record' & proces. inquisitionis prædict' certiorari, Tibi præcipimus, quod si judic' inde reddit' sit tunc record' & process. inquisit' præd' cum omnibus ea tangent' nobis sub sigillo tuo distincte & apert' mittas, ita quod, &c. ubicunque, &c. ut ulter' super hoc fieri fac' quod de jure, &c. faciend', &c. Teste, &c.*

[191.]

**A** And that Writ of Post-Disseisin ought to be brought by those who <sup>7 E. 3. 24. con.</sup> first recovered, or by some of them, and of the same Land which was recovered, or of Part thereof, or against those, or some of them against whom the Recovery was.

But if a Man recover by a *Præcipe quod reddat*, and after he is disseised by him against whom he recovered, and the Disseisor doth make Feoffment, and taketh back an Estate to him and another; he who first recovered shall have a Post-Disseisin against him and his Jointenant, as it seemeth, and he shall be punished by the Statute if it be found against him.

But if he who loseth the Land by Default or Reddition in a *Præcipe quod reddat*, do after disseise him who recovered, and make a Feoffment in Fee unto another, or for Life, it seemeth he who recovered shall have a Post-Disseisin against him who disseised him again, although he be not

Tenant of the Land; for in a Writ of Post-Disseisin, the Demandant shall not have Judgment to recover the Land, &c. but the Sheriff shall put and restore the Plaintiff to his Possession, if he find the Disseisin, &c. and shall take the Defendant, and keep him in Prison until, &c.

And it seemeth, that Non-tenure is no Plea in a Writ of Post-Disseisin for the Defendant, but he ought for to answer the Disseisin, &c. when he comes in upon the *Scire facias*, &c. And if he make Default upon the *Scire facias* returned, the Sheriff shall take the Inquest: *Tamen quære.*

9 H. 6. 6.  
7 R. 2. Entry 55.

### Writ of Entry in the Nature of Assise, which is called, Entrie in de Quibus.

9 H. 5. 13.  
If this Writ be brought against a Person, he shall not have Aid of the Patron and Ordinary.

**A** Writ of *De quibus* which is brought in the Place of an Assise is, where a Man is (a) disseised of any Lands, Tenements, or Rents, whereof he hath an Estate in Fee, then he may sue that Writ, and the Writ is such:

*Rex Vic', &c. Præc' A. quod juste redd' B. unum messuag' cum pertin' in D. quod clamat esse jus & hæreditatem suam, de quo idem A. injuste & sine judicio disseisivit prædict' B. post primam transfret' dom' H. Regis in Vasconiam, &c. ut dic' & nisi, &c.*

And if a Man bring a Writ of Disseisin made to his Ancestor; then the Writ is of another Form, thus:

20 E. 2.  
Brief 851.

*Præcipe A. quod juste, &c. redd' B. unum messuag' cum pertin' in D. quod (b) clamat esse jus & hæreditatem suam, & de quo idem A. injuste & sine judicio diff. C. patrem prædict' B. vel alium antecessorum prædict' B. cujus hæres ipse est post primam transfret' Domini Regis, &c. ut dic'. Vel sic; per quod clamat, &c. & in quod, &c. nisi per C. qui illud ei dimisit, qui injuste E. patrem, vel prædict' B. &c. post primam, &c.*

And in the *Per* and *Cui* thus:

*Quod clamat, &c. in quod, &c. nisi per C. cui D. illud dimisit, qui inde injuste & sine judicio, &c. prædict' E. patrem præd' B. cujus hæres ipse est, vel præd' B. &c. post prim', &c.*

And in the *Post* thus (c):

*Quod clamat, &c. in quod, &c. nisi post disseisin' quam D. injuste, &c. fecit E. patri vel al' anteces. præd' B. cujus hæres ipse est, vel præfat' B. post primam transfretationem, &c. ut dicit' & unde queritur, &c. Et nisi, &c.*

And

(a) See accordant 9 H. 5. 9. and that after a Plea to the Writ, he shall plead over to the Disseisin. 8 R. 2. Brief 928.

(b) See before Writ of Entry, viz. in quibus non habet ingressum per J. S. qui dimisit dum habuit Custodiam ingr' 15 H. 3. Brief 878 or per J. S. qui tenuit in Villenage 31 E. 3. Counter-plea of Vou. her 121. But see a

Writ *Quod non habet ingressum nisi per Custodiam*, and it was abated; for by the Statute he might have an Assise, or a Writ of Entry *sur Disseisin*. 4 E. 2. Brief 790.

(c) Note; This Writ in the *Post* lies by the Statute of *Marlebr. Chap. the Last*; for before that Statute, he was put to his Writ of Right. 19 H. 4. 39.



And it appeareth by these Writs, that although he bring a Writ of a Disseisin made to himself, or of a Disseisin made to his Ancestors, that in both Cases the Writ shall be *Quod clamat esse jus & hereditatem suam*.

E And if Tenant for Life, or Tenant in Tail be disseised, they may sue a Writ of Disseisin *De quibus*, &c. but in that Writ it shall not be said, *Quod clamat esse jus suum & hereditat' suam*, and in his Count he shall set forth the especial Estate, &c. (a) 20 Aff. 2.

F And an Abbot, or Prior, or Master of an Hospital, or a Bishop, shall have a Writ *De quibus* upon a Disseisin of their Predecessors of Lands, Tenements, or Rent; and the Writ shall be such:

*Præcipe A. quod juste, &c. redd' Priori de N. unum mesuagium quod clam' esse jus Eccles. ipsius Prioris S. Mariæ de N. & in quod idem A. non habet ingress. nisi post diss. quam L. inde injuste & sine judicio fecit R. quondam Priori de N. predecess. prædict' Prioris post primam, &c. ut dic' unde queritur, &c.*

And if it be a Rent thus:

*Rex Vic', &c. Præc' I. M. quod juste, &c. redd' Priori de C. (b) tres solid' reddit' cum pertin' in D. quod clam' esse jus Ecclesiæ ipsius Prioris S. Nic' de C. Et de quibus W. D. injuste & sine judic' disseisivit W. quondam Priorem de C. præd', &c.*

G And the Aunt and the Niece shall join in the Writ, upon a Disseisin made to the Father of the one, the Grandfather of the other.

H And a Writ of *Entrie sur Disseisin* made unto his Ancestors of a Stream lieth, and the Writ shall be, *Præcipe quod reddat unum gurgitem*, and in his Count he shall alledge the Esplees in taking of Fishes. 13 E. 3.  
Entry 57.

I And so he shall have a Writ of *Entrie in de quibus* upon the Disseisin of a Passage; *quod Vi. H. 8 E. 3.*

K (c) And if the Disseisor enfeoff the King, who enfeoffeth another in Fee, the Disseisee shall have a Writ of *Quibus* upon the Disseisin against the King's Feoffee in the *Post*, &c. 22 E. 3. 7.  
Entry 11.  
12 E. 3. 7.  
23 E. 3. Fitz.

A And if Tenant in Tail bring a Writ of *Quibus* upon a Disseisin made to himself, he may count that he was seised in his Demesne as of Freehold, without shewing any particular Estate, or how the Estate began, or he may count upon the special Matter, and shew the Gift in Tail; *quod vi. P. 33 H. 6.* Entry 11.  
[192.]  
1 Ma. Dyer  
101.

B (d) And a Man may have a Writ of *Entrie of Quibus*, upon a Disseisin of a Common, *Quod reddat pastur' ad decem boves, &c. quod vi. P. 4 E. 3.*  
L 11 2 (a) And

(a) Note; The Writ, and also the Count, shall be special; viz. that A. gave to B. for Life, Remainder to C. in Tail, whose Cousin and Heir D. aforesaid is; but he need not shew how Cousin and Heir, in the Count. 21 H. 6. 26. and see there, that the Writ shall be *de libero Tenemento*, though the Count be of an Estate-tail, or for Life. Dyer 121.

(b) *Tres solid'*, &c. It may be *Quod clamat*, &c. as agreeing with *Reddit'*, or *Quos clamat*, and so refer to *solidos*. See 18 E. 2. Brief 833.

(c) But though the King ousts J. S. without Cause, and grants to B. J. S. shall not have a Writ of Entry.

(d) Viz. As Pernor, but not as Tenant of the Soil; but in that Case is put to his *Quod permittat*. 4 E. 2. Brief 791, 793.

14 H. 4. 10.  
Hankf. 24.  
E. 3. 70.  
Yet no *Præ-*  
*cipe* will lie  
of a Marsh  
because pro-  
perly it can-  
not be ren-  
dred. 13 E. 3.  
Br. demand.  
23. 39 H. 6.  
8. *Vi.*  
39 H. 6. 8.  
he shall have  
a *Præcipe* by  
the Name of  
a House.

(a) And a Man shall not have a Writ of *Entrie* in the *Post*, where C. he may have it within the Degrees, in the *Per*, or in the *Per* and *Cui*.

See *West.* 1. c. 40.

If a Man disseise the Father of a Marsh, and maketh the same D Meadow, and the Father dieth, the Son and Heir shall have a Writ of *De quibus* upon a Disseisin made to his Father of that Meadow, and by the Writ he shall demand the Lands, by the Name of a Meadow, and not by the Name of Marsh (b).

And so if it be Land covered with Water, and he is disseised thereof, and the Disseisor make it Meadow, the Disseisee shall have a Writ of *Quibus*, and by this Writ demand the Meadow, and suppose that he was disseised of Meadow by the Writ, &c. (c)

And so if a Man be disseised of Land, and he build a House upon the same, he shall suppose the Disseisin to be of a House, &c. *Quære* of this (d).

And the Writ of *Quibus* upon Disseisin of an Office is such :

*Rex Vic', &c. Præcipe H. Abb' de Burg' S. Petri, quod iuste, &c. reddat E B. officium Serjeantie in Abbatia de Burgo S. Petri, & redditum 24 panum, quadraginta lagenar' cervisie, & sex ferculorum cum pertin' in Vill' de Burgo S. Petri, quæ clamat esse jus & hæreditatem suam, & de quibus idem Abbas injuste & sine iudicio disseiss. &c.*

And he who cometh in unto any Land by (e) Recovery, or by Election, or by Succession, or by Disseisin, the Writ shall be brought against such Person always in the *Post*.

(a) One may falsify the Degrees by Plea after a *Prece partium*. 14 H. 4. 39. F. Brief 248.

(b) 33 E. 3. Entry 40. 4 E. 3. 47. 4 E. 3. Feoffments 79. 39 H. 6. 8. F. Entry 8.

(c) See *Trin.* 3 *Ja.* 1. B. R. Rot. 10.

(d) In Dower the Demand was of the third Part of two Mills, the Tenant pleads, that at the Day of the Writ purchased, they were two Tofts, and he was put to say, and yet are; though the Plaintiff had only said they are two Mills, and did not say that they were the Day of the Writ purchased; for it is sufficient for him if they were Mills at the Time of the Demand, and so in an Assise; *contra* in a *Præ-*

*cipe*. See 1 H. 5. 11. 4 Co. 87. Dyer 47. 14 Aff. 12. See *Pasch.* 33 El. Rot. 1308. *Hayes* and *Allen*; the Husband aliens the Wife's House, the Wife abates the House and builds a new one, whereof the Side Walls stand on the Tenant's Land; yet the Wife shall have a *Cui in vita* of the House, because it is a House at the Time of the Demand; yet she shall not recover the whole House. 33 E. 3. Entry— 4 E. 3. Feoffments 79.

(e) See where a Recovery makes a Degree. 5 E. 2. Entry 66. 7 E. 3. 62. *Cui in vita* 11. See 11 E. 3. Entry 56. where a Recovery against the Party shall not remit to the Degrees.

Writ



## *Writ of Dum fuit infra atatem.*

**G** A Writ of *Dum fuit infra atatem* lieth, where an Infant maketh a Feoffment in Fee of his Lands, or for Life, or a Gift in Tail, when he cometh of full Age, he may have that Writ to recover those Lands or Tenements, which were so aliened by him, &c. And within Age, he may enter into the Land, and take it back again, and by his Entry, he shall be remitted to his Ancestor's Right; but yet he shall not maintain that Writ, until he be of full Age of Twenty-one Years, for the Words of the Writ do so suppose, *Dum fuit infra atatem*, by which it appeareth that he is not within Age at the Time of the Writ, &c. and also the Writ is such; *Qui plenæ ætatis est, ut dicit*, by which it appeareth that he ought to be of full Age (a), when that he bringeth that Writ; and the Writ is such:

*Rex Vic', &c. Præcipe A. quod, &c. redd' B. qui plenæ ætatis est ut dicit, duo messuagia, &c. quæ idem B. ei dimisit dum infra atatem fuit, ut dicit, &c. Et nisi fecer', &c. And so in the Per, In quæ idem A. non habet ingress. nisi per C. cui prædict' B. illa dimisit. And in the Post thus, In quod, &c. nisi post dimis. quam præd' B. dum inf. ætat' fuit inde fecer' W. ut dic', & unde queritur, & nisi, &c. But that Clause, Qui plenæ ætatis est, shall not be put in the Writs of Per, Cui, or Post, but only in the first Writ, by Grant made by the Demandant to the Tenant.*

**I** And if a Man bring this Writ upon the Alienation of his Ancestors, then this Clause; *Qui plenæ ætatis est*, shall not be in the Writ, and yet the Infant shall have a *Dum fuit infra atatem* of a Seisin, and Alienation of his Ancestor during his Nonage; and the Writ shall be such:

*Præcipe A. quod, &c. redd' B. unum messuag' cum pertin' quod clam' esse jus, &c. & in quod idem A. non habet ingress. nisi per C. patrem, vel alium antecess. prædict' B. cujus hæres ipse est quod illud ei dimisit dum infra atatem fuit: Vel sic; Quod clam', &c. & in quod, &c. nisi per C. cui D. avia prædict' B. cujus, &c. dum eadem D. &c. And in the Post, Quod clam', &c. & in quod, &c. post dimis. quæ D. amita, vel consanguinea prædict' B. cujus hæres ipse est, dum eadem D. &c. inde fecit H. ut dic', & unde queritur, &c.*

**K** (b) And if two Infants be Jointenants, and they alien the Land during their Nonage, at their full Age they ought not to sue forth several

Writs

(a) See 13 E. 3. *Dum fuit infra* 3: Where a *Dum fuit infra atatem* was brought of Tenements in Gloucester, and the Defendant pleads that when one knew how to count 12 Pence, or to measure an Ell of Cloth, he might alien by the Custom of the Vill, and that the Plaintiff was of such an Age when he leased, that he knew how, &c. and because he did not set forth the Age

in certain as to the Number of Years, so that the Party might have joined Issue thereon, Judgment was given for the Demandant.

(b) See 18 E. 2. Brief 831. and if the Writ supposes an Entry into the Moiety by his Demise, where it was into the Whole, both the one Writ and the other is false. N. Br. 128, 141.

39 H. 6. 42.  
In 46 E. 3. 34.  
A *Dum fuit infra atatem* was admitted of a Rent, and yet by some the Gift is void; but the Delivery of the Deed is not void.  
Post. 202.

34 H. 6. 3.  
Davies acc.  
19 H. 6.  
*Ac de cui in vita.*

Writs of *Dum fuit infra ætatem*, because their Nonage is the Cause of the Action which is several, for the Nonage of the one, is not the Nonage of the other, nor the Alienation of the one, the Alienation of the other.

See 14 E. 3. And if the Husband and Wife alien the Wife's Lands, during the L  
Brief 282. Nonage of the Husband and Wife, the Wife at her full Age after the

Death of the Husband, shall have *Dum fuit infra ætatem*, for such Alienation. *M.* 14 E. 3.

14 E. 3. *ibid.* But if the Husband were of full Age, and the Wife within Age, and they both alien the Wife's Lands, and then the Husband dieth, it is a Question, whether the Wife shall have a *Dum fuit infra ætatem*, (a) and I conceive that she shall have a *Dum fuit infra ætatem*, or a *Cui in vita* as she pleaseth, for when they join in a Feoffment of the Land, it shall be said the Feoffment of the Wife until she disagree; for if the Husband and Wife make a Gift in Tail, or a Lease for Life of the Wife's Lands rendring Rent, if the Husband dieth, the Reversion is only in the Wife, and she may accept the Rent, and the same shall bind her and her Heirs; and then if she will not accept the Rent, but, because she was within Age at the Time of the Feoffment, she will bring a *Dum fuit infra ætatem*, it seemeth she shall not be received so to do; for by that Suit she affirmeth that she made the Feoffment, and then it shall not be said the Feoffment of the Husband only, but the Feoffment of the Wife alone after the Death of the Husband, if she affirm that to be her Feoffment; and by the *Dum fuit infra ætatem*, she doth affirm the same, and that she made the Feoffment during the Coverture; and on the other Side it may be said, that she doth not affirm the same to be a lawful Feoffment made by her. And also by the Feoffment of the Husband, the Entry of the Wife shall be taken away; but by the Feoffment of the Wife during her Nonage, his Entry shall not be taken away; and therefore *Quære* the Law, &c.

[193.]

### *Writ of Cui in vita.*

THE Writ of *Cui in vita* lieth, where the Husband doth alien in A  
Fee the Right of Inheritance of his Wife, or the Freehold of his Wife by Feoffment, or Grant for Life, or in Tail: Then after the Death of the Husband, the Wife shall have *Cui in vita contradicere non potuit*: And the Writ lieth where the Wife hath an Estate for Life, or in Tail, and the Husband alieneth that Estate and Title of the Wife's, then the Wife after his Death shall have that Writ.

39 H. 6. 38. (b) And if the Wife do not bring the Writ during her Life, then if  
Pris. contra she had an Estate in Fee-simple, her Heir shall have a Writ which is  
vi. 16 H. 7. called  
8, 9.

(a) 14 E. 3. *Aid* 27. 21 H. 6. 24. 22 H. 6. 24. 7 E. 4. 7. *con.* (b) 4 El. 246. b. 46 E. 3. *Cui in vita* 23. 46 E. 3. *Age* 76.



called *Sur cui in vita* after her Death. And if the Wife have an Estate in Tail, and her Husband alien, and make a Feoffment of that Estate ; then if the Wife dieth, her Heir shall have a Writ of *Formedon* in the Descender to recover that Estate, and not a Writ of *Sur cui in vita* ; for those Writs of *Cui in vita*, and *Sur cui in vita*, are Writs founded upon the Common Law, and of an Estate in Fee-simple ; for there was not other Estate at the Common Law which would descend, but a Fee-simple : For if the Lord by the Common Law giveth Lands to hold of him, if the Tenant dieth without Heir, he shall have a Writ of Escheat.

- B (a) And so by the Common Law ; if a Man gives Lands to one and the Heirs of his Body, &c. if he dieth without Heirs of his Body, the Lord by the Common Law shall have a *Formedon* in the Reversion of that Estate, for Want of Issue of him to whom the Gift was made ; but yet the Donor shall have an Estate in Fee-simple, as I think, and that appeareth by the Statute, which saith, *De tenement' que multoties dantur sub conditione* ; by which Words it appeareth, that the Gift had a Condition implied therein ; so that it shall revert for Want of such Issue, and by Reason of the Tenure reserved, &c. but it doth not appear by the Statute that he shall have an Estate-tail of other Nature than the Estate which was by the Common Law ; and the Form of the Writ of *Cui in vita* is such :

A Feme sole made a Deed of Feoffment, but always after continued Seisin of the Land, after she took

Husband, who delivered the Land to the Party to whom the Deed was made ; the Feme may have a *Cui in vita* ; because she did not execute the Feoffment by Delivery of the Land, 34 E. 2. *Fitz. Cui in vita* 21.

Plo. Com. 29 & 239. 12 E. 4. 3.

- C *Rex Vic', &c. Præcipe A. quod iuste, &c. reddat B. que fuit uxor D. N. Br. 131. unum mes. cum pertin' in N. quod (b) clamat esse jus & hered' suam. Et quod idem A. non habet ingressum nisi per prædict' D. quondam virum ipsius B. qui illud ei dimisit, cui ipsa in vita sua contradicere non potuit, ut dicit.*

- D And if she hold in Frankmarriage, and the Husband alien, then the Writ shall be, *Quod clamat esse jus & maritag' suum, & in quod idem A. &c. nisi per C. cui prædict' D. quond' vir ipsius B. illud, ut supra.*

- E And this Writ of *Cui in vita* may be in the *Per*, *Cui* and *Post*, and in the *Post* the Writ shall be,

*Et in quod idem A. non habet ingressum, nisi post dimissionem, quam præd' D. quondam vir ipsius B. (c) cui ipsa in vita, &c. non potuit, inde fecit, ut dic'*

(a) 4 El. 246. 46 E. 3. *Adjudged* 76.

(b) Note ; If the Feme was in of a Fee-simple by Purchase, then the Writ shall be *Quod clamat esse Jus suum* ; or *Quod clamat esse Jus suum de Dono* : And note ; *Jus* is always intended a Fee-simple ; yet it seems that in the Case of Purchase, *Quod clamat esse jus & hereditatem*, is not abateable, though properly *Hereditat'* is intended by Descent, and not by Purchase in this Writ. 7 H. 4. 5. 30 H. 6. 38. *Quod clamat*

*esse Jus & hereditatem suam*, though it was by Purchase. 10 H. 6. 9.

(a) Note ; If the Writ be in the Degrees the Words *Cui in vita*, &c. are put in the End ; but if in the *Post*, in the Middle ; and therefore if the Writ be, *Post dimissionem quam, &c. vir ipsius B. inde fecit cui ipsa, &c.* the Writ shall abate ; for the Words relate to the next Antecedent. 16 E. 3. *Brief* 652.

*dic', & unde queritur, &c. & nisi, &c. Vel sic; Quod clam' esse jus suum de dono S. qui ipsam B. inde feoffavit, & in quod, &c.*

11 Aff. 17.  
Br. Aff. 167.  
16 H. 7. 8. 9.  
48 E. 3. 8.  
39 H. 6. 38,  
&c.  
And if the Husband and Wife purchase jointly, and the Husband alieneth all in Fee and dieth, the Wife shall have a Writ in this Form (a):

*Quod clamat esse jus suum de dono I. qui ipsam B. & præd' C. quondam virum suum inde feoffavit, & in quod, &c.*

And if she have an Estate to her and the Heirs of (b) her Body, and of the Body of her Husband begotten, then the Writ is; *Quod clamat' tener' sibi & hæred' de corpore suo, & de corpore præd' D. quondam viri sui exeuntibus, ex dimissione I. Vel sic; quod clamat esse jus suum ex dimissione quam I. inde fecit eidem B. & præd' D. quondam viro suo, & hæred' ipsius B.* And there the Husband shall have a joint Estate with the Wife for the Term of her Life.

Note, The Statute of West. 2. c. 3. extends to give this Account, as well for Recovery before the Statute as after,  
5 E. 2. Cui in vita 23.

And if the Wife claim the Lands in Dower, then the Writ shall be: H

*Quod clamat esse dotem suam (c) ex dono D. primi viri, vel secundi viri sui, Et in quod, &c. nisi præd' C. secundum virum ipsius B. vel tertium virum, qui illud ei dimisit, &c.*

And if she hold for Term of Life of Dimission, then the Writ shall be:

*Quod clamat tenere ad vitam suam ex dimissione quam I. inde fecit eidem B. per præf. D. quond' viro suo ad vitam eorundem B. & D.*

2 E. 4. 13.  
4 E. 2. cui in vita 22.  
20 H. 6. 28.  
11 E. 3.  
Brief 477.  
Note the Case of West. 9 E. 4. 16.

And if the Husband and Wife lose by Default the Wife's Lands, after the Death of the Husband, she shall have a *Cui in vita* for to recover those Lands so lost by Default; but if a Man recover by a *Cessavit* Lands of the Wife by Default of the Husband and the Wife upon a *Cesser*. during the Marriage had betwixt them; if the Husband dieth, the Wife shall not have a *Cui in vita* upon that Recovery, *quod vi. Tri. 4 E. 2.*

11 E. 3. 9.  
36 E. 3. cui in vita 2.

If the Husband and Wife, and a third Person purchase jointly, and the Husband alieneth all in Fee and dieth, the Wife, as it seemeth, shall have a *Cui in (d) vita* of a Moiety, being the third Jointenant; but it seemeth such Alienation is a Severance of the Jointure, *quod vi. Pas. 16 E. 3. Cui in vita* in the Abridgment: And if the Husband alien the Corody in Fee, which the Wife hath, it shall not be any Discontinuance, but the Wife may demand her Corody.

2

If

(a) If the Writ suppose *Ex Dono A.* and B. 'tis a good Plea, that *A.* did not give.  
4 E. 2. Brief. 795.

(b) 48 E. 3. 8. 16 H. 7. 8. 4 E. 2. Brief 795. *contr.* 22 E. 45. And Note; The Writ shall be in the same Form, tho' he be Tenant after Possibility, and not *quod clamat tenere* for his Life, *de Dono, &c.* 18 E. 3. 27.

(c) *Ex Dimissione I. qui inde feoffavit præd' B.* is good. 18 H. 6. 24.

(d) *Rex præ se, &c. qua clamat tenere ad vitam suam ex dimissione quam I. S. fecit eidem*

H. the Demandant, & prædicto B. her Husband, and C. *Filio prædictor' H. and B. & hæredib' de corpore ipsius B. &c. in quam non habet Ingressum, si non per prædict' B. quondam virum ipsius H. qui illam ei dimisit Cui ipsam, &c.* and held, (1.) That he need not alledge the Esplees but in Person of the Demandant, and not in C. who does not claim from him. (2.) It need not shew that C. is dead, but it shall come in by the Shewing of the Tenant; whereupon Treawin said, C. is in Life, and demanded Judgment of the Writ; but it seems to be only



- A** If the Husband and Wife exchange the Land of the Wife for other Lands, [194.] if the Wife agree unto the Exchange after the Husband's Death, she shall not have a *Cui in vita*. And if the Wife do accept of the Parcel of the Land in Dower, of which she hath a *Cui in vita*, by that Acceptance she shall be barred in her *Cui in vita* of the Residue.

9 E. 4. 16. if the Husband and Wife lose by Default in Waste, no

*Cui in vita*; the Reason is, because no Land is in Demand in, &c. Writ, 36 E. 3. She shall have a *Cui in vita* of no Part during the other's Life. 36 E. 3. She shall have a *Cui in vita*, that is, of a Purchase during the Coverture, that he shall not have a *Cui in vita* after the Death of the others; but for, &c. he may. 10 E. 4. 2.

2 E. 2. *Cui in vita*, 19. 8 E. 2. *ibid.* 25.

8 E. 2. *Cui in vita* 28. The Husband gave the Land of the Wife to I. who gave other Land to the Husband and Wife, and to her Son of the Husband, and to the Heirs of him who survived, and that was pleaded by Exchange in Bar, in a *Cui in vita*; and holden in Bar. 20 E. 3. *Cui in vita* 10.

So if she accept a Rent where she and her Husband make a Feoffment. 21 H. 6. 24.

2 E. 2. *Cui in vita* 117. 8 E. 2. 28. Perk. 58. 4 Co. 5. b. 8 E. 3. 12. 10 E. 3. *Cui*, &c. 32.

If Husband and Wife be Jointenants before the Coverture, and the Husband alieneth all the Land and dieth, she shall not have a *Cui in vita* but for a Moiety. But if they be Joint Purchasers during the Coverture, and he alien all the Land and dieth, his Wife shall have a *Cui in vita* of the whole Land, because that during the Coverture as to Purchase, they are but one Person in Law. And the Writ of *Sur Cui in vita* lieth for the Heir of the Wife, where the Husband alieneth all the Land in Fee; and the Writ is such:

19 H. 6. 45. 21 E. 2. 9. 17 Aff. 310. 17 E. 3. contr. where Acceptance is made, for she is remitted.

*Præc' A. quod, &c. reddat B. unum mess. cum pertin' in N. quod clamat esse jus & hereditatem suam, & in quod, &c. nisi per C. quond' virum D. matris præd' B. cujus hæres ipse est, quod illud ei dimisit, cui ipsa D. in vita sua contradicere non potuit, ut dicit, nisi, &c.*

And in the Per and Cui thus:

*Quod clamat, &c. Et in quod, &c. nisi per C. cui D. quond' vir' E. matris, amitæ, sororis vel consang' præd' P. cujus hæres, &c. illud ei dimisit, cui ipsa D. in vita, &c.*

And in the Post the Writ shall be thus:

*Nisi post dimissionem quam I. quondam vir C. matris præd' B. & amitæ præd' M. cujus hæres ipse est, cui ipsa C. in vita sua contradicere non potuit, inde fecit, ut dicit, & unde queritur, &c. & nisi, &c.*

- D** And by that Writ appeareth, that the Aunt and the Niece may join in a Writ of *Sur cui in vita*, upon an Alienation made by the Husband, their common Ancestor; or upon a Recovery had against the Husband and Wife, who was the common Ancestor to them, if the second Husband alien the Lands of the Wife, and he and his Wife die, the Issue of the Wife and the first Husband shall have a *Sur cui in vita* against

M m m the

only to the Action, and that only as to a Moiety, per *Shard.* For of a Moiety, 'tis a Disseisin to C. but this seems to be doubted; for by *Shard.* it has been seen, that the Feme and C. have joined in an Assise. 11 E. 3. *cui in vita* 9. See 36 H. 6. Entry congeable 54. 36 E. 3. *Cui in vita* 20. where

'tis said, that the Feme shall not have a *Cui in vita* living C. because they may join in a Writ of Right; but per *Moret*, she shall have a *Cui in vita* of the Whole, and See 35 Aff. 13. If the Stranger survives, he may enter into the Whole.

the Alienee; although the second Husband be living, if he were not intituled to be Tenant by the Courtesy; but if the second Husband be intituled to be Tenant by the Courtesy, then the Issue of the first Husband shall not have a *Sur cui in vita* during the Life of the second Husband.

8 E. 2. Cui in vita 26.

44 E. 1.

Fitz. ib. 30.

5 E. 3. 37.

Cui in vita

13. 49 E. 3.

20. Quære.

But 50 E. 3.

6. Act. 5 E. 2.

Cui in vita

25.

And a *Sur cui in vita* was maintainable of a Rent, *M. 12 E. 3.* And *P* in a *Cui in vita*, the Grant or Gift alledged in the Writ is not tra- *G* versable.

If a Man giveth Lands to a Woman to marry her, and they marry, *H* and afterwards the Husband alieneth the Lands and dieth, the Wife shall have a *Cui in vita* of those Lands given her by her Husband.

### *Writ de sine assensu Capituli.*

**T**HE Writ of *Sine assensu Capituli* lieth where a Dean, Bishop, Pre- *I* bendary, Abbot, Prior, or Master of an Hospital, alien the Lands which they have in the Right of their House, Abbey, or Priory, without the Assent of their Convent, or their Chapter or Brethren, &c. He who is the Successor shall have that Writ, which is such, and may be in the *Per*, *Cui* or *Post*.

*Rex Vic', &c. Præcipe A. quod, &c. reddat B. Episcopo de S. unum mess. cum pertin' in N. quod clamat esse jus Eccles. ipsius Episc' S. Mariæ de S. & in quod idem A. non habet ingressum nisi per H. cui R. quondam Episcop' de S. prædeces. prædict' nunc Episc' illud dimisit sine assensu & voluntate capituli sui, ut dicit, &c.* *K*

And for a Master of an Hospital, the Writ shall be,

*Rex Vic', &c. Præcipe A. quod juste, &c. reddat B. custod' Hospit' S. Mariæ Magd' Linc' unum mes. quod clamat esse jus Hospitalis sui præd', & in quod idem A. non habet ingress. nisi per D. quondam custod' Hospitalis prædict' qui illud ei dimisit sine assensu & voluntate fratrum & sororum ejusdem Hospitalis, ut dicit, & nisi, &c.*

And for a Prebend the Form of the Writ is such :

*Rex Vic', &c. Præcipe A. quod, &c. redd' B. Præbendario Præbendæ de D. in Eccles. B. Petri Ebor' unum mes. &c. in A. quod clamat esse jus Præbend' suæ, Et in quod, &c. nisi post dimissionem, quam R. de B. nuper Præbendarius præbend' prædict' prædeces. Præbend' prædict' sine licentia & voluntate Archiepiscopi Ebor' decani & capituli Eccles. prædict' inde fecit W. de R. ut dicit, & unde queritur, &c.*

And for the Prior of St. John of Jerusalem in England, lieth a Writ upon an Alienation of his Predecessor, thus :

*Quod reddat B. Priori Hospit' S. Joh' Jerusall' in Anglia, &c. quod clamat esse jus Eccles. suæ S. Joh' Jerusall' in Anglia, & in quod non habet, &c. nisi per W. quondam Priorem S. Joh', &c. prædeces. præd' nunc Prioris, qui illud dimisit sine assensu capituli, ut dicit, & nisi, &c.*

21 H. 6. 9.

And the Process in these Writs are Summons, Grand Cape, and Petit Cape.

(a) And



**L** (a) And hereby it appeareth, that a Prebendary shall have a Writ *De sine assensu Capituli*; by which it seemeth that he hath a Fee-simple in the Prebend; and yet one Prebendary may enter upon the Alienation of his Predecessor.

And also a Prebendary shall have a *Juris utrum* upon an Alienation of his Predecessor, by which it seemeth he hath not a greater Estate than as Parson: But yet it seems (b) reasonable that he have this Writ, *De sine assensu Capituli*; because that he, the Bishop, and the Chapter are but one Body, and are as one Body, altho' the Possessions be severed and divided among them; and every one of them is enabled to bring an Action of his own Possession in his own Name. [195.]

**A** And a Man may have a Writ of *Sine assensu Capituli* against the same Person by several *Præcipes* in the Writ of Lands in several Towns, and upon Demises of his several Predecessors, and it shall be good; *Quod vi. H. 33 E. 3.*

**B** And if the Prebendary, or a Bishop, or Abbot be disseised, and afterwards he releaseth to the Disseisor; it seemeth the same is an Alienation upon which he may have a Writ *De sine assensu Capituli*; for if the Disseisor die seised after the Release made, the Successor hath not any Remedy but by this Writ, or by a Writ of Right; but if the Disseisor doth not die seised, then it seemeth the Successor may enter upon the Disseisor, notwithstanding the Release of his Predecessor, for by the Release no more passeth than he may rightfully release, &c.

*Writ of Assise of Mortdauncestor.*

**C** **T**HE Writ of Mortdauncestor lieth, where my Father or Mother, Brother or Sister, (c) Uncle or Aunt, or Nephew or Niece, dieth seised of any Lands, Tenements or Rents, or of a Corody or other Rents; as Hens or Capons, issuing out of other Lands of an Estate in Fee-simple: Now if a Stranger after their Deaths abate in that Land, Rent or Profit, I who am his Heir shall have this Writ of Assise of Mortdauncestor.

**D** And if the Ancestor were seised, the Day that he died, of any Lands or Rents, or other like Things of an Estate in Fee-simple, although that a Stranger entereth and disseiseth him of that Land or Rents the Day that he dieth, so that he dieth not seised of the said Land or Rents, &c. yet I who am his Heir shall have that Assise of Mortdauncestor, because the Writ doth not suppose that my Ancestor died seised; but the Writ saith, *Parati sacramento recogn' si W. pater, &c. fuit seisitus*

M m m 2

in

(a) See the contrary adjudged, *Dyer* 240. for Provostship of *Wells*. See 2 *H. 4. 5. Litt.* 145.

(b) In 3 *E. 3.* a Prebend had a Writ of Entry *sine assensu Capituli*, and the Writ

was *non habuit Ingressum*, from whence it follows, 'tis a Lay Fee; and how the Writ shall be, see *Stattham Tit. Prebend. Case. 2.*

(c) And not Cousinage, for such Writ will abate, if of the Seisin of the Uncle.

*in dominico suo ut de feodo, die quo obiit, &c.* and the same is sufficient, although he dieth not seised; and the Form of the Writ is such: E

*Rex Vic' S. salutem. Si A. fecer', &c. tunc sum', &c. xii liberos & legales homines de visir' de N. quod sint coram Justiciar' nostris ad primam assisam cum in partes illas venerint, vel coram Justiciariis nostris apud Westmon' octabis, &c. vel coram dilectis & fidelibus nostris D. & E. & his quos sibi associaverimus ad cert' diem & locum, quos iidem D. & E. tibi scire fac' parat' sacramento recognoscere, si W. pater præd' A. vel mater, soror, frater, avunculus vel amita fuit seiscitus in dominico suo ut de feod' de uno mesuagio & una virgata terræ cum pertin' in N. die quo obiit. Et si obiit post coronation' dom' H. Regis. (a) Et si idem A. propinquior hæres ejus sit, & interim præd' mesuag' & terr' videant, & nomina eorum imbrevari fac', & sum' per bonos sum' B. qui præd' mes. & terras nunc tenet, quod sit ibi ad audiend' illam recogn', & habeas ibi sum' & hoc breve. Teste, &c.*

10 E. 2. For-  
medo. 55.  
Plow. Com.  
239. if a  
Man hath  
Issue a Son,  
and his  
Wife dieth;  
and he taketh another Wife, and hath Issue a Son, and Lands are given to him and his second Wife in special Tail; before the Statute *De Donis*, if the Stranger had abated, no Mortdauncestor lieth.

And upon that Writ he needs not have any special Patent, for the F general Patent made to the Justices, shall serve for that Writ. And if the Writ be, *Quod sit coram dilectis & fidelibus nostris D. & E. & his quos sibi associavimus*, then they use to have a special Patent directed to the same Justices, &c. But if the Justices be the Justices of Assise in the same County, then their general Patent shall serve for that Assise as well as if they had a special Patent. And the special Patent is such:

*Rex dilect' & fidelibus suis D. & E. salut. Sciatis quod constituimus vos Justic' nostros una cum his quos vobis associaver' ad ass. mortis antecessoris capiend', quam A. arrain' coram vobis per breve nostrum de uno mes. & una virgata terr' in N. & ideo, &c.* as in the Patent of Assise of Novel disseisin.

30 Ass. 24. And a Man may have an Assise of Mortdauncestor of several Rents, G  
Br. Attaint.  
72. 50 Ass.  
4 Br. Att. 84. against several Persons in several Counties, and in the End of the Writ shall be several Summons against the Tenants; and the Form of the Writ is such:

*Rex Vic', &c. Si A. & B. fecer', &c. tunc sum' xii liberos, &c. parati sacramento recognoscere si W. pat' præd' A. & avus præd' B. fuit seiscitus, &c. de decem solid' redditus cum pertinen' in N. & si obiit, &c. Et iidem A. & B. sint propinquior', &c. & interim tenementum illud, unde redditus ille provenit, videant, & nomina eorum, &c. & sum' per bon' sum' S. qui*

13 H. 4. 17.

(a) See that in a *Mortdauncestor* by an Infant, of the Seisin of his Father or Mother, the Writ shall be good, tho' those Words are omitted; *contr.* in a Writ of *Ayle*. 13 H. 4. 17. *Westm.* 1. c. 39. 30 Ass. 25. and See where these 3 Articles are to be inquired, *viz.* (1.) If the Tenant pleads to the Writ and Vouches, and on such Dilatory they are at Issue, and found against

all, yet the Points of the Writ are to be inquired, *Et si petens deficit in uno cadit in omnibus.* (2.) It seems, if the Dying seised be denied, yet the other Points shall be inquired, for this is no Plea in Bar. (3.) If a Bar be pleaded, and found for the Plaintiff, there the Points of the Writ shall not be inquired. 17 E. 3. 28. 39 Ass. 13. 9 Ass. 3. 8 Ass. 17. *Dyer* 311.



*qui sex solid' redditus eis inde deforc', & T. qui quat' solid' redditus eis inde deforc', quod tunc sint, &c.*

And by this Writ it appeareth, that the Aunt and the Niece shall join in Assise of Mortdauncestor, and that is by the Statute of Gloucester, cap. 6.

H (a) And if the Heir who bringeth Assise be within Age, he shall not find Pledges; and therefore the Form of the Writ shall be of another Form, and shall not say, *Si A. fec' te, &c.* but thus:

*Rex Vic', &c. Sum, &c. xii liber' & legal' homines, &c. si W. pat' præd' A. qui infra ætatem est, ut dic' fuit seisit', &c.* And shall not say in the Writ, *Et si obiit post coronat', &c.* because it appeareth by the Age of the Demandant; but if many Sisters be Demandants, and some of them be within Age, and some of full Age, then the Writ shall be in the common Form, as if all were of full Age (b).

If a Man go beyond the Sea in Pilgrimage, and dieth there, his Heir shall have a Writ of Mortdauncestor of another Form, thus: [196.]

*Rex Vic', &c. Si A. fecer', &c. sum' xii, &c. si W. pat' præd' A. fuit seisit' in dominico suo, &c. de reddit' unius clavi gariofli, cum pertin' in N. die in quo it' peregrinat' (c) arripuit versus terr' sanct', vel versus Hierosolym', vel versus S. Jacob', in quo itinere obiit, ut dic', & si iter illud arripuit post coronationem, &c.*

A And in that Writ it sufficeth if he were seised the Day he went out of the Land, and took the Sea, altho' it was not the Day of his Death. And if the Father enter into Religion, and be professed, the Son shall have a Mortdauncestor, if the Stranger abate in the Land; the Writ shall be, *Si W. pater, &c. die quo habitum Religionis assumpsit, in quo habitu professus fuit, ut dicitur. Et si habitum illum assumpsit post coronationem, &c.* Post. 211. G.  
3 E. 4. 3.  
9 H. 5. 9.

B If a Man have a Corody to him and his Heirs, if he die seised, or was seised thereof the Day of his Death, his Heir shall have an Assise of Mortdauncestor thereof, if it be taken from him; and the Writ shall be,

*Rex Vic', &c. Si W. fecer', &c. tunc sum', &c. xii liberos, &c. de Visu' villæ Westm' quod sint, &c. parati, &c. Si L. mat' præd' W. fuit seisita in domin' suo ut de feodo de xl s. reddit' & redditu lxii panum, trium lagenarum vini, xx lagenar' cervisiæ, & xxx ferculorum cum pertin' in villa Westm' die quo obiit. Et si obiit, &c. Et si idem W. &c. & interim ten' unde redditus ille provenit videant, & sum', &c. T. Abbat' Westmon' & fratrem R. de B. & fratrem K. de S. commonachos ejusdem Abbatis qui reddidit' præd' ei deforc', quod tunc, &c.*

C And the Order to set the Parcels in the Writ, shall be as in a Writ of Right.

And

(a) Note; A Bill of Privilege is not *fecerit te securum, &c.* and yet the Demandant shall find Pledges to prosecute, or else 'tis Error. Dyer 288. See 4 *Just.* 150.  
(b) 13 E. 3. pl. 677. 9 E. 2. Brief 852.

(c) And in such Case, if the Writ be in common Form, it shall abate, 9 E. 2. *Mortdauncestor* 852. but a Writ of Ayle or Co-finage shall be general in such Case. 13 E. 3. Brief 677.

And a Man shall have a Certificate upon this Writ, and also Writs **D** of Association, and *Si non omnes*, as he shall have in Assise of Novel Disseisin.

And by the Statute of *Gloucester*, if Tenant by the Curtesy alien his **E** Wife's Inheritance, and dieth, the Heir of the Wife shall have an Assise of Mortdauncestor, if he have not Assets by Descent by the Tenant by the Curtesy, and the same shall be as well where the Wife was not seised of the Land the Day of her Death, as where she was seised thereof, for that Writ is given by the Statute.

If the Lord have the Ward of the Heir of his Tenant, and when he **F** cometh of full Age, the Guardian will not suffer him to enter into the Land, the Heir shall have an Assise of Mortdauncestor against the Guardian, by the Statute of *Marlebridge*, *cap. 16*.

8 Aff. 13. Br. Default and Appurtenance, 88.

And the Process in Mortdauncestor is Summons against the Party, **G** and if he make Default at the Day of the Assise Return, then the Plaintiff ought to sue a Resummons; and if he make Default again, the Assise shall be taken by his Default.

(a) And if a Man vouch in Assise of Mortdauncestor, and at the first Day the Vouchee make Default, then the Resummons shall issue forth against him: And so if the (b) Tenant or Vouchee at the first Day be essoined; and afterwards at the Day given by the Essoin, the Tenant or Vouchee make Default, a Resummons shall be awarded. But if the Tenant at first Day be essoined, as in the King's Service, and afterwards make Default at another Day, the Assise shall be taken by his Default, &c.

And if the Writ of Mortdauncestor be brought by several Summons **H** against several Tenants, then the Assise may be taken one against one Tenant, and another against the other Tenant; *quod vide 3 E. 3. Itin. North.*

(c) And a Mortdauncestor doth not lie for Lands devisable by Will, **I** because the Title may fall to another who is not Heir by the Will of the Ancestor, &c. and yet the Writ is true, that he was seised the Day he died; *quod vide 23 E. 3. lib. Ass.*

33 E. 3. Mortdauncestor 33. 1 H. 3. Mortdauncestor 51. 7 H. 4. 23.

And if a Man be seised in Tail, the Remainder to his right Heirs, **K** and afterwards he die seised without Issue of his Body, and a Stranger abateth, it is a Question if the Heir shall have an Assise of Mortdauncestor. And *An. 21 E. 3. Itin. Suff. M. 5 H. 4.* the Opinion of some is, that if the Remainder be to his right Heirs, that then he shall not have an Assise of Mortdauncestor: But if a Gift in Tail be made unto one, the Remainder to him and his right Heirs, that then he shall have an Assise

(a) Where the Tenant vouched a Foreigner, in order to remove the Plea, and the Vouchee was returned summoned, and made Default, the Parol was remanded. 3 Aff. 10. 28 Aff. 29.

(b) The Tenant was essoined at the Day, and afterward made Default, no Resummons was, but the Jury taken by Default.

10 E. 3. 7. 45 E. 3. 23. 4 H. 6. 23. 18 E. 4. 8. Note; 'Twas a common Essoin, yet see 8 Aff. 13. a Resummons granted, and see 22 Aff. 79.

(c) Rot. Parl. 21 E. 3. N. 47. a Petition inde. 22 Aff. 78. For Land in *Burgo de Scarborough*. 35 Aff. 1. 40 Aff. 2.



Affise of Mortdaunceſtor, becauſe he hath the Remainder in Fee to him and his Heirs : But it ſeemeth he ſhall not have an Affise of Mortdaunceſtor in the one Caſe, nor in the other ; for the Words of the Writ are, *Si W. pater, &c. fuit ſeiſitus die quo obiit in dominico ſuo ut de feodo*, and that he was not, for he was ſeiſed in Demefn *ut de feodo taliato*, and not in Demefn as of Fee, and therefore the Jury cannot find that he was ſeiſed in his Demefn as of Fee, for of the Demefn he was ſeiſed in Tail. *Quære* of that.

**L** And if the Anceſtor dieth ſeiſed, and hath two Sisters his Heirs, one of them ſhall not have an Affise of Mortdaunceſtor againſt the other, for this Writ lieth againſt Strangers, and not againſt Privies in Blood. 10 E. 3. Darrein Preſentment 13.

And ſo in Gavelkind, one Brother ſhall not have a Mortdaunceſtor againſt the other for the Privy of Blood, but he ought for to ſue a *Nuper obiit* againſt his Brother, or one Siſter againſt the other, &c.

And *H. 13 H. 3. Itin. Suff.* the youngſt Brother had a Mortdaunceſtor againſt a Stranger, and ſhall recover where the eldeſt went beyond Sea, although he were not dead, becauſe 18 Years paſſed ſince the eldeſt went beyond the Seas.

(a) And *H. 13 E. 2.* it was adjudged accordingly, where the younger Brother recovered in Affise of Mortdaunceſtor, where the eldeſt went beyond the Sea, and was alive.

### Writ of *Nuper obiit*.

**A** **T**HE Writ of (b) *Nuper obiit* lieth where the Grandfather, Father, Brother, Uncle, or other Anceſtors of the Demandant dieth ſeiſed of Lands, Tenements or Rents of an Eſtate in Fee-ſimple, and after their Death, one of the Heirs of the ſame Anceſtor doth enter and deſorce the Demandants ; now he or thoſe who are ſo diſſeiſed ſhall have that Writ againſt the (c) Coparcener ; and that Writ lieth for one Coheir againſt the others, or for divers Coheirs againſt many, as the Caſe is, and it ought to be where the common Anceſtor dieth ſeiſed of Land, &c. of an Eſtate in Fee-ſimple ; for if one Siſter do deſorce another Siſter of Land, whereof their Anceſtor died ſeiſed of an Eſtate in Tail, her Siſter ſhall have a Formedon againſt the Siſter who deſorced her, &c. and not a *Nuper obiit*. And the Form of the Writ is ſuch : [197.]

**B** *Rex Vic', &c. Si A. & B. fecerint, &c. tunc ſum', &c. C. quod ſit coram Juſtic' noſtris apud Weſtm' tali die, &c. oſtenſ. quare deſorc' præſ.* 7 E. 3. 15.

(a) If my younger Brother enters after the Death of my Father, I ſhall (not) have a Mortdaunceſtor againſt him, nor any other Action but Entry, and if he diſturb me, I may have an Affic. *Plow. 306. N. B.* 109.

(b) And it ſeems, that every Parcener ought to be named in the Writ, viz. Tenant or I manant. *Trin. 16 E. 3.*

(c) And ſhe ſhall have Judgment to hold in Severalty. *21 R. 2. Judgment 227.*

*præf. A. & B. (a) rationabilem partem suam, quæ eis contingit de hereditate, quæ fuit W. de N. patris, matris vel alterius antecess. prædicti A. B. & C. cujus heredes ipsæ sunt, & quæ nuper obiit, ut dic', &c. Et habeas ibi sum' & hoc breve, &c. Teste, &c.*

And the Writ may be brought by an Aunt against her Sister and her Niece; and then the Writ shall be such :

*Rex Vic', &c. Si A. & B. uxor ejus fecerint, &c. tunc sum', &c. C. & D. quod sunt, &c. ostens. quare deforc' præfat' A. & B. rationabilem partem ipsius B. quæ ei contingit de hereditate quæ fuit E. in N. matris prædicti B. & C. & proavæ prædicti D. cujus hæred' ipsæ sunt, & quæ nuper obiit, ut dic' & habeas, &c.*

Br. Entry  
congeable,  
122 collectis,  
that the  
Stranger  
gains no-  
thing of the  
Freehold by  
that Entry ;  
*quod nota.*  
7 H. 6. 8.

And that Writ lieth betwixt Coheirs in Gavelkind, as well as between C Women who are Coparceners ; and if one Coparcener be deforced by another Coparcener and a Stranger, she shall have a *Nuper obiit* against her Coparcener, and by the Rule in the Register, that Non-tenure shall not abate the Writ. *Vide supra L.*

And also by the Rule in the Register, in a *Nuper obiit*, Non-tenure D of Parcel of the Thing demanded shall not abate the Writ.

(b) And if two of the Coparceners enter after the Death of their E Ancestor and deforce the third Sister, and afterwards they make Partition betwixt them, and then one of the two alieneth her Part unto a Stranger in Fee, yet the third shall have a *Nuper obiit* against her two Sisters notwithstanding that Alienation, and shall recover the third Part thereof, whereof the Coparcener who aliened not was seised, &c.

And for to recover the third Part of the other Coparcener, which is in the Hand of the Stranger, she ought to sue an Assise of (c) Mortdauncestor in her Name, and in the Name of her other Coparceners, &c. or a Writ of Aiel, as the Case is.

16 H. 7. 1.  
per Keble,  
by the Dis-  
claimer the  
Demandant  
is put to his  
Assise of  
Mortdaun-  
cestor ; also  
he is barred  
of his Dama-  
ges in the  
*Nuper obiit*.

(d) And if one Coparcener do enfeof a Stranger in Fee, and F taketh back an Estate to him in Fee, or for Life, yet it seems a *Nuper obiit* lies against him by the other Coparcener, if he do not disclaim in Blood, *M. 2. E. 2.* and it seems reasonable. But *M. 21 E. 3.* and *M. 45 E. 3.* 7 *H. 6. 8.* it is holden the contrary : But several Tenancy, or Non-Tenure, is no good Plea in a *Nuper obiit* for the Privy of Blood ; but if he claim by Purchase, or disclaim in the Blood it is a good Plea.

And a *Nuper obiit* lieth betwixt Sisters of the half Blood.

G

And

(a) And therefore, if the Demandant is seised of Part of the Lands descended, altho' they lie in another Town, &c. the Writ shall abate. 4 *E. 2. Age 117.*

(b) Neither *Nontenure*, nor several Tenancy, are Pleas in a *Nuper obiit*. 7 *H. 6. 8.*

(c) A. and B. bring a *Nuper obiit* against C. D. and E. A. does not appear, C. and D. appear by Attorney, and E. appears in Per-

son, and says, that he is the Villain of I. S. And by Willy and others, this shall abate the Writ, and the Plaintiff shall be put to his *Mortdauncestor* against I. S. and the others. 18 *E. 3. 55.* accordant. 15 *E. 3. Brief 322.*

(d) 11 *H. 4. 23.* 21 *E. 3. Nuper obiit 14.* 21 *E. 3. 32.* 45 *E. 3. 19.* 30 *E. 1. Nuper obiit 18.*



- H And if a *Nuper obiit* be brought of the Seisin of the Grandfather, Darrein Seisin in the Father is no Plea, without alledging a Dying seised in the Father, &c.
- I A *Nuper obiit* lieth of the Seisin of the Great Grandfather.
- K And the *Nuper obiit* ought to be brought by that Coparcener who is deforced, &c. against all the other Coparceners, although that some of them have nothing in the Tenancy.
- L And it appeareth, *T. 4 E. 2.* that the *Nuper obiit* lieth of the Seisin of his Father, if the Father were seised the Day that he died; or the Day before, for that amounteth to a Dying seised, &c. 4 E. 2. Nuper obiit 10.
- M And if one Sister hath Issue a Son, and dieth, and the Son doth enfeoff a Woman in Fee of all the Land, and afterwards marries her; the *Nuper obiit* doth not lie by the other Coparcener against the Husband and Wife; but there he may bring a Mortdauncestor in his own Name, and in the Name of the Husband against the Husband and Wife. *Anno 18 E. 2. Itiner. Canc.* 8 E. 2. Nuper obiit 13.
- N A Villain and his Wife shall not have a *Nuper obiit* against his Wife's Coparcener, because he is not enfranchised by the Marriage of one of the Coparceners which was one of his Lords, to whom he was Villain before. 16 H. 3. 5. Nuper obiit 17.
- O And if the Father give Lands in Frankmarriage to his Sister, and dieth seised in Fee of other Lands, she shall not have a *Nuper obiit* against her Sister for the Lands in Fee-simple, unless she will put the Lands which were given in Marriage in Hotch-pot, &c.
- P A *Nuper obiit* lieth of a Corody.
- Q And Voucher, and the View, do not lie in the *Nuper obiit*.
- R And the Aunt and the Niece shall join in a *Nuper obiit* against the other Sister or Niece, &c.

Writ of *Quare ejecit infra Terminum*.

- S **T**HE Writ *Quare ejecit infra Terminum*, lieth where a Man leaseth Lands unto another for Years, and after he entereth and maketh a Feoffment in Fee of the same Lands to a Stranger, or for Life; the Lessee shall have that Writ *Quare ejecit infra Terminum* against the Feoffee or Lessee for Life. 11 H. 6. 6. If the Term expire pendant the Writ, yet the Writ shall not abate. [198.]
- T And in that Writ he shall recover his Term again, and his Damages also if the Term be not ended; and if the Term be ended, he shall recover all his Damages.
- U And the Process in that Writ is Summons, Attachment and Distress infinite, and not Process of Outlawry, because the Writ is not *vi & armis*. And the Form of the Writ appeareth after, &c.
- A But this Writ of *Quare ejecit infra Terminum*, was devised (as it is said) by a wife Man called *William Moreton*, and for this Cause: For if a Man lease Lands for Years, and after he oust his Lessee, and after he hath put him out, he make a Feoffment of the Land unto a Stranger
- N n n
- in

in Fee ; now the Lessee cannot have a Writ of *Ejectione firmæ* against him who is the Feoffee, because he did not put him out, for which in that Case the Lessee had no other Remedy but to enter again into the Land. And if the Feoffee do then put him out, the Lessee may have against him an *Ejectione firmæ vi & armis* for the Wrong done him, and before Entry made by the Lessee, he had not Remedy against the Feoffee. And therefore by the Equity of the Statute of *Westm. c. 24.* (As often as hereafter it shall happen in the Chancery that in one Case a Writ is found, and in the like Case falling under the same Law, and wanting the same Remedy, &c. let the Clerks of Chancery agree, &c.) And by Reason of that Statute was this Writ devised.

21 E. 4. 10.  
30. 1 H. 5.  
4. acc.

But yet if the Lessor put out the Lessee, and presently make a Feoffment in Fee, so as the Feoffee be Party or Privy to the Ouster of the Lessee, then the Lessee shall have a Writ of *Ejectione firmæ vi & armis* against the Feoffee, because he is Party to the Ouster, and to the Wrong done unto him ; and the Writ followeth :

*Rex Vic', &c. Si A. fecerit, &c. tunc sum', &c. B. quod sit, &c. ostensur' quare deforc' præf. A. unum mesuagium cum pertin' in N. quod C. ei dimisit ad terminum, qui nondum præteriit, infra quem terminum idem C. præfat' B. mesuag' illud vendidit, occasione cujus venditionis idem B. præf. A. de mesuagio præd' ejecit, ut dicitur, & habeas, &c.*

And the like Writ lieth where the Son and Heir of the Lessor C maketh a Feoffment, &c. and the Feoffee ousted the Lessee.

And if the Lessee granteth over his Term, and afterwards the Lessor D maketh a Feoffment of the Land unto a Stranger in Fee ; now the second Lessee shall have that Writ, &c. and the Writ shall be,

*Quare deforc' præf. B. unum mesuag', &c. quod R. cui L. illud dimisit ad terminum qui nondum præteriit, eidem B. dimisit ad eundem terminum, infra quem terminum idem L. mesuagium, &c.*

And so if four let a House to A. for Years, who granteth over his Estate to B. and afterwards two of the Lessors die ; and the Survivor maketh a Feoffment unto C. in Fee, B. shall have a *Quare ejecit infra Terminum* against the said Feoffee, and the Writ shall recite the special Matter.

And if a Man do lease Land for Years, and a Lessor doth suffer a Recovery to be against him upon a feigned Title, who entereth, yet it seemeth the Lessee shall have this Writ of *Quare ejecit infra Terminum*, &c. And the Words of the Writ are, *Occasione cujus venditionis* ; and yet the same is not properly a Sale, but those Words are but of Form. But before the Statute of 21 H. 8. c. 15. it seemeth that the Tenant for Years could not have falsified the Recovery had against his Lessor.

35 H. 8. 52.  
&c. 36 H. 8.  
63 L. 11. 8.  
fol. 74. 5 H.  
7. 7. 37.  
11 H. 6. 7.  
Babington.

And if a Man lease Lands for a Term of Years, and afterwards dieth F without Heir, and the Lord by Escheat enter and puts out the Termor, it is a Doubt whether he shall have a *Quare ejecit infra Terminum* against the Lord by Escheat ; but it seemeth reasonable that he should have it.



**C** And so if the Villain leaseth Lands for Years, and after the Lord of the Villain enter, and puts out the Termor, the Lessee shall have that Writ. And so if a Man lease Lands for Years, and afterwards a Stranger put out the Lessee, and disseiseth the Lessor, and afterwards the Lessor releaseth unto him, it seemeth the Lessee shall have the Writ, *Quare ejecit infra terminum* against the Disseisor, &c.

**I** And *Quare ejecit infra terminum* lieth as well against the Lessor, as against his Feoffee; *quod vide H. 19 H. 6.* 21 E. 4. 30.  
contr. 46 E.  
3. 4. contr.  
18 E. 2. pl. 7.

**K** And it seemeth that the Sale supposed in the Writ, is not traversable but only the Ejectment, &c. And if so, then it seemeth the Writ lieth against the Lord by Escheat, or against the Lord of the Villain who putteth out the Termor, &c.

But an *Ejectione firmæ* lieth against the Lord of the Villain, if he put the Termor out of his Lease made by his Villain, before Entry made by the Lord into the Land. And so an *Ejectione firmæ* lieth against the Lord by Escheat, if he oust the Termor of the Lease made by the Tenant, &c.

And for the Book of 19 H. 6. it appeareth that it is in the Election of the Lessee, to sue a Writ of *Ejectione firmæ*, or a Writ of *Quare ejecit infra terminum* against the Lessor or his Heir, or against the Lord by Escheat, or against the Lord of the Villain, if they put the Termor out of his Term, &c.

Ant. F.

## Writ of *Ex gravi Querela*.

**L** THE Writ of (a) *Ex gravi Querela* lieth, where a Man is seised of any Lands or Tenements in any City or Borough, or in Gavelkind; which Lands are devisable by Will, Time out of Mind, &c. Now if one who had Lands or Tenements there, doth devise those Lands or Tenements unto another in Fee-simple, or in Fee-tail, he to whom the Devise is made shall have this Writ of *Ex gravi Querela* for to execute that Devise. 1 Inst. 111. a.  
  
Note, That if a Town hath paid 15. it is no ancient Town that may devise, *Quare*, If a 26 H. 8. &c.

Per 40. Ass. 41. 39 Ass. Br. Ass. 355. This Writ is not incident to Lands devisable. Devise of a Rent out of the Land devisable be within the Benefit of this Writ. or 5, and 4 and 5 Mar. Dyer 140.

**M** And if a Man do devise such Lands or Tenements unto one in Tail, the Remainder over in Fee unto a Stranger, if the Tenant in Tail enter and be seised by Force of the Intail, and afterwards dieth without Issue, he in the Remainder shall have such Writ of *Ex gravi Querela* to execute that Devise. Post. 200. b.

N n n 2

And

(a) And it seems, that this Writ does by Custom, the Land be devisable. 39 Ass. not lie without a special Custom, altho' 6. See contr. 40 Ass. 41.

[199.]

And so if a Man devise Lands or Tenements unto one in Tail, and afterwards the Tenant in Tail dieth without Issue of his Body; the Heir of the Donor, or he who hath the Reversion of the Land, shall have the Writ of *Ex gravi Querela* in the Nature of a Formedon in the Reverter, to recontinue the Possession of the Land to him who hath the Reversion. And first for Land devised in Tail within the City of London; the Form of the Writ for the Heirs of the Devisee in Tail, is such:

40 Aff. 41.  
Br. Castrum  
38.

Locus im-  
perfectus:  
See the next  
Writ.

*Rex Majori & Vic' Lond' salutem. Ex gravi querela I. filie E. & M. sororis ejusdem I. accepimus, quod cum secundum consuetud' in eadem civitate hactenus obtentam & approbatam liceat unicuique Civis ejusdem Civitatis tenementa sua in eadem civitate in testamento suo in ultima voluntate sua tanquam catalla sua legar' cuicunque voluerit, ac S. quondam Civis civitatis predict' in testamento in ultima voluntate sua quatuor shopas cum pertin' in eadem civitate existent', vel quatuor mesuagia, & decem shopas cum pertin', &c. E. habend' sibi & hered' de corpore suo exeuntibus legasset R. & S. uxori ejus, duo mesuag' & iii shopas inde F. & iii shopas inde prefat' I. & M. filiabus & hered' ejusdem E. deforc' minus juste in ipsarum I. & M. dispend' non modicum & gravamen, & contra voluntatem testatoris predict' ac contr' cons. predict'. Et quia eisdem I. & M. injuriar' nolumus in hac parte, Vobis mandamus, quod vocat' coram vobis partibus pred' auditisque hinc earum rationibus, inspectoque tenore testamenti predict' inde eisdem I. & M. plenam & celerem justic' inde fieri faciat', prout de jure & secundum consuet' predict' fuerit faciend' hactenus in casu consimili ibid' fieri consuevit, vel eisdem I. & M. in hac parte fieri faciat' debitum & festinum justic' complementum, prout, &c. Teste, &c.*

And it appeareth by that Writ, that the King commandeth them to do according to the Custom of the City, or to do Justice to the Parties, by which it seemeth, that the Mayor upon that Writ shall award Process to summon the Party, who is Tenant of the Land, to appear at a certain Day, to answer to the Plaintiff in the Nature of a Summons in a *Præcipe quod reddat*; and when he cometh, the Plaintiff ought to shew the Testament, and to count upon the same, and to alledge Seisin of the Land in the Testator, and how that he devised the same to him. And that the Defendant then plead thereunto, or the Mayor and Sheriffs ought to proceed therein according to the Usage of the City. And that Writ may be sued against several Tenants; and then the Mayor ought to make several Precepts unto every Tenant. And if the Land be in another Borough, then the Writ shall be such:

*Rex ballivis suis de Magn' Yarmouth, salutem. Ex gravi querela, &c. (ut supra) quod secundum cons. in Villa dict' hactenus, &c. liceat unicuique Burgens. ejusdem Vill' tenementa sua, quæ sibi acquisierit in eadem Villa, in testamento suo in ultima voluntate sua, &c. (ut supra) Ac N. Burgens. ejusdem Vill' unum mesuagium cum pertin' quod sibi acquisierit in eadem Villa, in testamento suo in ultima voluntate sua W. & heredibus suis legasset, R. de F. mes. predict' post mortem pred' N. ingress. illud prefato W. deforc' minus juste, in ipsius W. &c. (ut supra) & quia nolumus, &c. (ut supra)*

Post. 201.

And



F And if a Man deviseth his Lands to his Wife for Life, the Remainder over to another in Fee, and the Tenant for Life entereth, and is seised by Force of the Devise and dieth, and he in the Remainder is deforced, he shall have such Writ :

*Ex gravi querela, &c. (usque ibi) voluerint, ac M. quondam Civis ejusdem civitatis D. uxori sue in testamento suo in ultima voluntate sua, quatuor shopas cum pertin' in I. quas sibi acquisierit in eadem civitate, ad vitam ipsius D. habend' legasset, ita quod post decess. ejusdem D. præf. shopæ cum pertinent' præf. E. & hæred' suis remanerent, N. quæ shopas illas tenet ex dimissione præd' D. eas præf. E. post mortem ejusdem D. deforc' minus juste, in ipsius E. dispendium, &c.*

G And if a Man do devise Lands by his Testament in Tail, the Remainder over in Tail unto another, and the first Tenant in Tail entereth, and dieth without Issue ; and the second Tenant in Tail entereth in his Remainder, and dieth without Issue, the Heir of the Donor shall have a Writ of *Ex gravi Querela* in this Form.

*Ex gravi querela, &c. (ut supra) ac I. P. quondam Civis civitat' præd' pat' præd' S. cujus hæres ipse est, unum mesuag' cum pertin' in suburbiis Lond' M. fil' ipsius I. & hæred' de corpore ipsius M. legitime procreandis habend' legasset, Ita quod si idem M. sine hæred' de corpore suo legitime procreat' obiret, prædict' mesuag', &c. R. fil' præd' I. & hæred' de corpor' præd' R. legitim' procreat' remaneret, L. capellan' cantar' ad Altar' S. Joh' in novo opere in Ecclesia S. Pauli Lond' pro anima Magistri W. quond' canon' ejusdem Ecclesiæ ordin' prædict' mesuag' cum pertin' post mortem præd' M. & R. præf. S. ad quem diem mesuag' cum pertin' reverti debet, eo quod uterque M. & R. obiit sine hæred' de corpore suo legit' procreat', ut dic', deforc' minus juste in ipsius S. dispendium, &c.*

H And it appeareth by the subsequent Writ, that when a Man doth make a Devise of his Lands in London, and also of his Goods, and makes Executors, &c. then the first Executors shall prove the same before the Ordinary ; and then after they shall bring the same before the Mayor into London, &c. and it shall be there enrolled, and then upon that Enrolment the Mayor upon the Writ of *Ex gravi Querela* sued for the Lands shall do Execution, and such Process as upon a Fine of Lands, &c. and the Writ is such :

*Rex Majori, &c. Vic' Lond' salutem. Cum ut accepimus, secund' consuetudinem in eadem civitate hætenus obtentam & approbatam, testamenta in quibus laica tenementa in prædict' civitate legata fuer', fact' prius probatione eorund' testamentor' coram Ordinari' pro bonis & catallis in eisdem legatis, coram vobis in Hustingo nostro Lond' approbari & irrotulari debeant ad exec' tenementor' sic legator' faciend'. Ac jam ex relatu R. consang' I. de P. nuper civis Lond' accepimus, quod licet præf. I. unam shopam & duo solar' cum pertin' in Parochia S. Mich' Lond' in eadem civitate, in testamento suo in ultim' voluntate sua præfat' R. legasset, habend' & tenend' sibi & hæred' suis imperpetuum, idemque testam' prout moris est, coram Ordin' probatum existit, tamen E. quæ fuit uxor I. de P. & A. exec' testamenti ejusdem I. testamentum illud penes se detinent, non permittentes illud in Hustingo præd' irrotulari, ut præd' est, in exher' ipsius R. periculum manifestum, ac contra consuet'*

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*consuet' præd' ; Nos nolentes eid' R. injuriari in hac parte, vobis mandamus, quod vocatis coram vobis præf. execut', & auditis tam præd' R. quam præd' execut' in hac parte rationibus, ulterius in præmiss. faciatis quod de jure, & secund' Consuetud', civitatis præd' fuerit faciend' & hactenus in casu consimili ibidem fieri consuevit.*

And by that Writ it appeareth, that if a Man have Lands devised unto him in *London* by Will, that he shall have a Writ unto the Mayor, to compel the Executors to bring in the same to be proved before them in *London*, and inrolled in the Hustings.

And if a Man have Lands devised unto him in *Oxford*, the Custom is, A that the Testament shall be proved there before the Ordinary, and afterwards it shall be proved before the Mayor of *Oxford*, &c. And if the Mayor will not prove the Will, then he to whom the Devise is made, and also the Executors, who took any Advantage of Administration by that Will, shall have a Writ out of the Chancery directed unto the Mayor and Bailiffs, commanding them to prove the Will, and thereupon they shall have an *Alias* and a *Pluries*, *vel causam nobis significes*, &c. and afterwards an Attachment against them if Need be, returnable in the King's Bench, or Common Pleas.

Post. B.

And by the same Reason he shall have the like Writ against the Mayor of *London* to prove such Will, and to inrol the same, and upon that an *Alias* and *Pluries* against the Mayor of *London*, and Attachment, if Need be.

And by the same Reason it seemeth reasonable, that a Man shall have a Writ directed to the Ordinary to prove the Will of any Man, &c. and the Form of the Writ is such :

*Rex Majori & Ballivis Vill' Oxon' salutem. Querelam T. & M. uxoris ejus accepimus continet' quod cum secund' consuet' in vill' prædicta usitatam & hactenus approbatam, testamenta burgensium ville prædict' ibidem decedentium, super tenement' & possessionibus, si sint ibidem legata, primo coram Ordinari' & secundar' coram vobis in cur' ville prædict' probar' debeant & consuever' temporibus retroactis, & executores testamenti N. cum præf. T. & M. postquam testamentum prædict' N. coram Ordinariis ville prædict' prout moris est, probatum fuit, frequent' illud coram vobis iterato proband' detuler' juxta consuet' prædict' occasione quorund' tenementor' in suburbio ejusdem vill', quæ præd' N. in ultima voluntate sua idem M. legaverit, sicut in testamento prædict' plenius continet'. Vos tamen probationem illam hactenus recipere recusastis, & adhuc recusatis minus juste, per quod nec prædict' executores, nec præf. T. & M. super tenement' prædict', aut aliis tenementis per præd' N. legatis, administrationem consequi possint, in retardationem executionis testament' prædict' & contra voluntatem præd' N. necnon damnum ipsorum T. & M. & execut' præd' non modicum damnum & gravamen : Nos igitur executoribus T. & M. injuriari nolentes in hac parte, vobis præcipimus, sicut alias præceperimus, quod si ita est tunc præfat' execut' & T. & M. plenam & celer' justitiam in hac parte fieri fac', prout de jure & secundum consuet' præd' in casu consimili fuerit faciend', ita quod querela ad nos inde non perveniat iterata, vel causam nobis significetis, quare mandatis, &c. Teste, &c.*

And



**B** And it is reasonable that it be so done in every other City, where Lands be deviseable by Will, and are devised by Will, that the Executors and the Devisee shall have such Actions against the Ordinary, and also against the Bailiffs of the Town and Boroughs, to prove such Wills.

And in Place of a Formedon in the Descender in Tenements devised, is such Writ:

*Ac A. quondam civis, &c. M. filiae suae quoddam mesuag', &c. habend' sibi & hered' de corpore suo exeunt' legasset, T. Mesuagium praedict' ingres. illud post mortem praed' M. & W. filii & hered' ejusdem M. praef. L. fratri & hered' praedict' W. deforciavit minus juste, in ipsius, &c.*

And it seemeth, that when the Tail is once excepted before of the Devise in the Tenant in Tail, or in the Tenant for Term of Life, that then he (a) in the Remainder, or Heir of Tenant in Tail, have a Formedon in the Descender by the Course of the Common Law, after the Statute of *Westm. 2.* according to the common Form upon a Gift made in Tail by Deed.

**C** And there is another Form of Writ in the Register in Nature of a Formedon in the Descender.

**A** And if a Man in *London* devise Land unto a Woman for Term of her Life, and afterwards to her Executors to sell, and to convert the Money to her own Use, by the Custom of *London* that Testament ought to be proved before the Ordinary, and afterwards before the Mayor, &c.

[201.]

**B** and to be enrolled, &c. If the Testament be proved before the Ordinary, and afterwards one Executor doth detain the same, and will not prove it before the Mayor, &c. the other Executor shall have a special Writ directed unto the Mayor and Sheriffs of *London*, commanding them to call the Executors before them, and to see the Testament, &c. and to do Right according to the Custom of the City, and according to the Law, &c. which Writ appeareth in the Register.

**C** And if a Man doth devise Lands to his Wife for the Term of her Life, upon Condition that if she marry, that the Lands shall remain unto his Son in Tail; and for Default of such Issue, the Remainder to the right Heirs of the Donor in Fee: Now if the Wife taketh a Husband who occupieth the Lands, and he in the Remainder dieth without Heir of his Body; the right Heir of the Donor shall have a special Writ of *Ex gravi Querela* directed unto the Mayor and Sheriffs of *London*, reciting that special Devise, and the Matter as it is, commanding them to call the Parties, and to hear them, and to do Right, &c. And by that it appeareth, that he in the Remainder shall have Advantage of the Condition if it be broken; but the same shall be by way of Action, and not by Entry, for the Condition not performed, which Writ appeareth in the Register (b).

2 & 3 Ma.  
Dyer.  
10 Co. 41.

Vid. Perkins  
164.  
That he  
in the Re-  
mainder  
shall not take  
Benefit of  
the Condi-  
tion by way  
of Entry.

(a) See 34 E. 3. Formedon 65. For a Formedon in Remainder does not lie without *alle'ging* Estates in the particular Tenant. Dyer 140. b.

(b) See 43 E. 3. Formedon 68. 4 E. 6. 27. 30 Aff. 47. 9 Aff. 17. 8 H. 8. 32. 1 Inst. 214. b. Litt. 164.

*Writ of Entre ad terminum qui prateriit.*

**A** Writ of *Entre ad terminum qui prateriit* lieth where a Man leaseth D Lands or Tenements for Term of Life, or Years, and afterwards the (a) Term expireth, and he to whom the Lease was made, or a Stranger, entreth upon the Lands, and occupieth the same, and deforceth the Lessor, the Lessor or his Heirs shall have the Writ.

21 E. 3.  
Brief 308.  
One brought  
the Writ up-  
on a Lease by  
his Treifaile.

And that Writ lieth in the *Per*, *Cui*, and *Post*. For if the Lessee E hold over his Term, and afterwards maketh a Feoffment, the Lessor or his Heirs may have that Writ against the Feoffee in the *Per*; and if the Feoffor maketh a Feoffment over, he may have it against the second Feoffee in the *Per* and *Cui*, and against the third Feoffee in the *Post*. And the Form of the Writ is such:

*Rex Vic', &c. Præc' A. quod reddat B. unum gurgitem, &c. in quem id' A. non habet ingressum, nisi per C. cui prædict' B. illud dimisit ad terminum qui prateriit, &c. Et nisi fecerit, &c. Et præd' B. fecerit te securum, &c.*

And in the *Post* the Writ is, *Et in quod idem A. non habet ingressum, nisi post dimissionem, quam idem B. inde fecit D. ad terminum qui prateriit, & quod post terminum illud ad præf. B. reverti debet ut dic' & unde querit' quod præd' A. ei deforc', &c. Et nisi, &c.*

And by these Words *Unde queritur*, in any Writ of Entry in the *Per* and *Cui*, but only in a Writ of Entry in the *Post*.

But if a Man will bring a Writ of Entry, *Ad terminum qui prateriit* F of his Father, Mother, or other Ancestor, then there behoveth to be in the Writ the Words, *quod clamat esse jus & hæreditatem suam*; and the Form of the Writ is such:

*Rex Vic', &c. Præc' A. quod, &c. redd' B. unum mesuag' cum pertin' in N. quod clamat esse jus & hæred' suam, & in quod idem A. non habet ingressum nisi per D. patrem, vel matrem, vel alium anteces. prædict' B. cujus hæres ipse est qui illud ei dimisit ad termin' qui prateriit, ut dicit, & nisi fecerit, &c.*

And in the *Per* and *Cui*, thus: *Quod clamat, &c. & in quod, &c. nisi per C. cui D. (a) pat' vel alius antecessor' prædict' B. cujus hæres ipse est, illud dimisit ad termin' qui prateriit, &c.* And in the *Post* thus: *Nisi post dimission' quam R. ac prædict' B. &c. cujus hæred' ipsi sunt, &c.* Or thus: *Quam C. pater prædict' B. & avus prædict' S. cujus hæred' ipsi sunt, inde fecit H. ad termin' illum qui prateriit, & quod post termin' illum ad præfat', &c. reverti debet, ut dic', & unde queruntur quod prædict' A. eis deforc', &c. nisi, &c.*

And in every Writ of Entry which a Man demandeth of the Possession of his Ancestor, he ought to have these Words in the Writ, *Quod clamat*

(a) *Viz.* By Efflux of Time or Surrender. *Dyer* 178. (b) *Consanguineus*; and it appeared by the Count that he was Great Grandfather. 21 E. 3. 52.



*clamat esse jus & hæred*, &c. but of his own Possession he shall not have those Words in the Writ, but only in a *Cui in vita*, brought by a Woman of her Inheritance aliened by her Husband, for there she shall have in her Writ these Words, *Quod clamat esse jus & hæreditatem suam*, &c. but the same is where the Woman claimeth an Estate in Fee-simple by the Writ, for if she claim but an Estate in Tail, or a Freehold by her *Cui in vita*, then the Writ of *Cui in vita* shall make a special Mention of that Estate, &c.

G If a Man lease a Manor for Life or Years, unto which an Advowson is appendant, and afterwards the Lessee doth make a Feoffment of the Manor in Fee, and taketh back an Estate of the Manor, except the Advowson, to him for Life; if the Lessor bring the Writ of Entry *Ad terminum qui præteriit*, of the Manor against the Lessee, and doth not make Exception of the Advowson, the Writ shall abate for Nontenure of the Advowson upon the Matter shewed, as appeareth by the Register.

H The Aunt and the Niece shall join in this Writ of *Ad terminum qui præteriit*, as appeareth by a Writ before mentioned.

And if a Man maketh a Feoffment in Fee upon Condition, that if he pay a certain Sum of Money at a certain Day to the Feoffee or his Heirs, that then he shall have the Land again, and that he may enter, if he pay the Money at the Day, and afterwards the Feoffee will not suffer him for to enter: The Feoffor shall have the Writ of *Ad terminum qui præteriit*, because that when he payeth the Money, the other hath no Term in Effect; and if he should not have this Writ, he could not have any Remedy but to enter, &c. and thereupon to have an Assise.

33 Ass. 11.  
Vi. Theol-  
wall. 131,  
132, 228.  
8 E. 3.  
Entre 4.  
Vi. 14 H. 8.  
10. Brook.  
[202.]

And *M. 5 E. 3.* it was adjudged that the Plaintiff should recover in such Action upon such Matter pleaded and shewed; but I do not perceive how the same could be maintained by Reason, because the Fee-simple is not properly said a Term, for then the Lord by Escheat should have a Writ of *Ad terminum qui præteriit*, if his Tenant dieth without Heir, where he cannot have a Writ of Escheat; and in *Ad terminum qui præteriit*, the Lease alledged in the Count is traversable.

A If the Husband and Wife lease the Wife's Lands for Years, and the Husband dieth, and the Termor holdeth over his Term, the Wife shall have a Writ of *Ad terminum qui præteriit* if she will, &c. but she ought for to count that she and her Husband leased the Land, &c.

Vid. 50 E. 3.  
17.

B And it appeareth in 8 E. 2. *Itin. Canc.* that the Grantee in Reversion shall have a Writ of *Ad terminum qui præteriit* against the Lessee, or his Heir, or Assignee, and yet there is no such Writ in the Register.

## Writ of Dum fuit non Compos Mentis.

4 Co. Bever-  
ley's Case.  
1 Inst. 247.

**T**HE (a) Writ of *Dum fuit non Compos Mentis*, lieth where a Man, C who is not of *sane memoire*, alieneth his Lands or Tenements in Fee-simple or in Fee-tail, for Life or for Years, if he be afterwards de- forced by his Alienee or Lessee, then he himself shall have this Writ against his Alienee or Lessee, notwithstanding his own Alienation, or his own Lease; and the same appeareth by Writs in the Register, which are of such Form:

*Rex Vic', &c. Præc' A. quod reddat B. unum mess. & xx. acr' terr' cum pertin' que id' B. ei dimisit, Dum non fuit Compos Mentis suæ, ut dicit, & nisi fecerit, &c. Vel sic; in quod idem A. non habet ingressum nisi per C. cui predict' B. illud dimisit, dum non fuit Compos Mentis, &c. Vel sic; in the Post, in quod idem A. non habet ingress. nisi post dimission' que præd' B. dum non fuit Compos Mentis suæ inde fecit D. & unde queritur, &c.*

Litt. 97. con.  
39 H. 6. 42.  
con. 3 Aff.  
jl. 10. con.  
9 H. 6. 6.  
Britton. Tit.  
Debt 66.  
Bro. Dumfuit,  
Err. 5. 9.  
N. B. 126.

And some have said, that Writ lieth not by him who alieneth the Land, D because he shall not disable himself nor contradict his own Deed; but that seemeth to be little Reason, for this is an Infirmary which cometh by the Act of God; and it standeth with Reason, that a Man should shew how he was visited by the Act of God with Infirmary, by which he lost his Memory and Discretion for a Time; as if an Infant within the Age of Twenty-one Years doth make a Feoffment in Fee, or a Lease for Years, he himself shall avoid his Feoffment or Lease, as well within Age as of full Age, although he shall not have a *Dum fuit infra atatem* within Age, because the Writ doth suppose him to be of full Age, but an Infant of the Age of fourteen Years hath Discretion, as hath been adjudged at such Age, and if he at such Age commit Felony, he shall be hanged for the same, and yet his Feoffment, Lease or Grant, shall not bind him before the Age of Twenty-one Years; because he hath not perfect Discretion or Knowledge what he ought to do, or what is to his Profit or Disadvantage before such Age; and therefore he shall alledge, that he was within Age at the Time of the Feoffment, Grant or Lease made by him; by which it appeareth, that he shall alledge, that he had not perfect Discretion at that Time, for that Nonage is an Infirmary of Nature, and cometh by the Act of God; and a *fortiori* then he who is of *non sane memoire*, shall alledge, that he was not of *Sane memoire* at the Time of his Feoffment or Grant; for he who is of unsound Memory, hath not any Manner of Discretion; for if he kill a Man, it shall not be Felony, nor Murder, nor he shall not forfeit his Lands or Goods for the same, because it appeareth that he hath not Discretion; for if he had Discretion he should be hanged for the same,

Plow. Com.  
19. a.  
21 H. 7. 32.  
26 Aff. 27.  
5 E. 3. Con.  
24 contra.  
4 E. 6. 19. a.

(a) The Issue in Tail shall not have a *Dum fuit non Compos* on the Alienation of his Ancestor, but a Forfeiture. 18 E. 3. 31.



same, as an Infant who is of the Age of Discretion, who commiteth Murder or Felony shall be hanged for the same.

And it appeareth in *Britton*, that in Debt upon a Bond, the Defendant said, that he was not of *Sanæ memoriæ* at the Time of making the Bond, and holden that it was a good Plea.

E And if an Ideot doth release all his Right by Deed, yet if it be afterwards found by Office that he is an Ideot, the King shall seise the Land, and the Release shall not bind, &c. *Quod vide* in Title *Scire fac'*, P. 32 E. 3. in the Abridgments.

Stanford  
Prærog. 54.  
50 Aff. 2. con.

(a) But in the Book of Assises, *Anno* 35 E. 3. the Tenant in an Assise pleaded the Release of the Plaintiff, and the Plaintiff said, that he was not then of *Sane memoire*, &c. And there the Opinion of two Justices was, that he should not have that Plea; but I do not much regard their Opinion, for the Reasons aforesaid.

F And it appeareth in 7 *Henry* 4, 5. That a Feoffment of an Ideot made by Letter of Attorney is void, and so it seemeth to be of a Man of *Non sane memoire*.

*Dum non compos mentis* was brought of the Alienation by a Son, and admitted, 18 E. 3. *Sci. fac.* 10. 12 E. 4. 6. 39 H. 6. 42. [203.]

(b) And if a Man of *Non sane memoire* alieneth his Land in Fee and dieth, his Heir shall have such Writ as he may enter, as his Ancestors might have entred, as well as if an Infant within Age had aliened his Lands, &c.

And in 25 E. 3. in the Book of Assises, a Man of *Non sanæ memoriæ* made a Feoffment in Fee, and took back an Estate to himself for Life, and there it was agreed and admitted, that the same was a Remitter, and (c) thereupon Issue was taken, that he was of perfect Memory, &c.

B and that was found by Verdict; which see in the Title of *Feoffments* in the Abridgments.

And the Writ for the Heir upon the Alienation of his Ancestors shall be in such Form:

*Rex Vic'*, &c. *Præcipe* A. quod, &c. reddat B. 20 acr' terr' cum pertin' in N. quas clam' esse jus & hæreditatem suam, & in quas idem A. non habet ingressum nisi per C. vel alterum antecess. prædict' B. cujus hæres ipse est, qui illas ei dimisit, dum idem C. non fuit Compos Mentis suæ, ut dic', &c.

And thus in the *Per* and *Cui*:

*Quas clamat*, &c. & in quas, &c. nisi per C. cui D. avus prædict' B. vel alius antecess. præd' B. cujus hæres ipse est, illas dimisit, dum idem D. non fuit Compos Mentis suæ.

Or thus in the *Post*.

*Quas clamat*, &c. Et in quas, &c. nisi post dimissionem, quam C. proavus, vel alius antecessor præd' B. cujus hæres ipse est, dum idem C. &c. inde fecit H. ut dicit', & unde querit', &c.

C And 14 *An.* of the King was such Writ granted:

O o o 2

*Præcip'*

(a) *F. Sci' fac'* 106. 18 E. 3. *ibid.* 10.

(b) 7 H. 4. 5. So that the Land shall escheat notwithstanding the Feoffment. 4 Co. *Beverley's Case*.

(c) But note; The Issue found that he was remitted. 25 Aff. 4. See 17 E. 3. 7. or 70. See *Ero. Feoffment de Terr'* 26. F. Remitter 23. It is not admitted to be a Remitter.

*Præcip' R. quod, &c. reddat B. unum redditum trium panum, septem lagenarum cervisie, & septem ferculorum per septimanam, cum pertin' in C. & quem idem B. ei dimisit, dum non fuit Compos Mentis suæ, ut dic', & nisi, &c. And the Process is Grand Cape & Petit Cape, as in other Præcipe quod reddat.*

### Writ of Intrusion.

**T**HE Writ of Intrusion lieth, where Tenant for Life, or in Dower, <sup>E</sup> or by the Curtesy, (a) dieth seised of such Estate for Life, and after their Death a Stranger doth intrude upon the Land, he in the Reversion shall have that Writ against the Intruder, and the Writ shall be such:

*Rex Vic', &c. Præcipe A. quod juste, &c. reddat B. unam carucatam terr' cum pertin' in N. quam clamat esse jus & hæreditatem suam, & in quam idem A. non habet ingressum (b) nisi per intrusionem quam in illam fecit post mortem C. quæ fuit uxor D. quæ illam tenuit in dotem de dono prædict' D. quondam viri sui patris vel fratris prædict' B. cujus hæres ipse est, ut dicit, & nisi, &c.* <sup>F</sup>

And in the *Per* thus:

*Et in quod idem A. non habet ingressum nisi per C. qui illud dimisit post mortem D. quæ fuit uxor E. quæ illud tenuit in dotem de dono prædict' E. quondam viri sui.*

And in the *Per* and *Cui* thus:

*Et in quod idem A. non habet ingressum nisi per C. cui D. illud dimisit, quæ se in illud intrusit post mortem, &c.*

And in the *Post* the Writ is thus:

*In quam idem A. non habet ingress. nisi post intrus. quam C. in illud fecit post mortem D. quæ fuit uxor E. quæ illud tenuit in dotem de dono prædict' E. quondam viri sui fratris prædict' B. cujus hæres ipse est, & quod post mortem prædict' D. ad præfat' B. reverti debeat, ut dicit, & unde queritur, &c. & nisi, &c.*

And so that Word, *& unde queritur* was put in every Writ of Entry in the *Post*.

And if a Woman recover Dower against him in the Reversion, or <sup>G</sup> against his Heir, and afterwards she died seised of that Estate, and a Stranger doth intrude into the Land, then he in the Reversion shall have a Writ of Intrusion. And in the Writ mention shall be made of the Recovery, thus, *in quod idem A. non habet ingressum nisi per intrusionem quam in illud fecit post mortem C. quæ fuit uxor D. quæ illud in Curia nostra coram*

(a) And therefore see 24 E. 3. 74. It is a good Plea to say that he was seised, and gave to him whom he supposes Tenant for Life: and to the Heirs of his Body, and for that he died without Heir, he entred

*absque hoc*, that he held for Life of the Lease of the Demandant, at the Time of his Death.

(b) And not in *quas se intrusit*. 6 E. 2. Brief. 808.



*coram Justiciariis nostris apud W. per breve nostrum per considerationem ejusdem Curie recuperavit ut dotem suam, quæ ei contingebat de libero tenemento, quod fuit prædict' D. quondam viri sui in eadem villa versus præd' B. Vel sic; versus W. patrem vel alium antecessorem præd' B. cujus hæres ipse est, ut dicit', & nisi, &c.*

And so she shall have another Writ of another Form, where she recovereth her Dower against the Heir of her Husband, and after the Heir granteth the Reversion unto the said B. and then the Tenant in Dower dieth seised, and a Stranger abateth, the said B. shall have a Writ of Intrusion against the Stranger, and the Writ shall rehearse the whole special Matter, which Writ appeareth in the Register.

H And the Aunt and the Niece shall join in a Writ of Intrusion, and if the Heir doth assign Dower unto his Mother, and then commits Felony, for which the Lord claimeth the Reversion, and granteth the same to one in Fee, to whom the Tenant attorneth, and afterwards the Grantee of the Reversion hath Issue two Daughters, and dieth, and one of them hath Issue and dieth: Now the Aunt and the Niece shall join in that Writ, &c. and the Writ shall be such:

*Rex Vic', &c. Præcipe A. quod juste, &c. reddat B. & M. sorori ejus, & P. & F. fratri ejus unum messuag', &c. In quod idem A. non habet ingress. nisi post intrusionem quam H. in illud fecit post mortem I. quæ fuit uxor W. quæ illud tenuit in dotem de, &c. quondam viri sui de N. patre prædict' B. & M. & avo prædict' P. & F. cujus hæred' ipsi sunt, ex assign' T. capital' dom' feodi illius, de quo prædict' I. illud tenuit in dotem ratione felonie per W. de S. filium & hæred' prædict' W. factæ, ut dicitur. Et quod post mortem præd' I. ad præfat' B. M. P. & F. reverti debet per formam assign' præd' ut dicunt, & unde queruntur, &c.*

A And if a Man intrude after the Death of Tenant by the Curtesy, the Writ of Intrusion shall be such: [204.]

*Præcipe A. quod, &c. reddat B. &c. quod clamat, &c. Et in quod idem A. non habet ingressum, nisi per intrusionem quam in illud fecit post mortem D. qui illud tenuit per legem Angliæ post mortem C. quondam uxoris suæ, matris vel amitæ præd' B. cujus hæres, &c. ut dicit.*

And in the Per thus:

*Nisi per C. qui illud ei dimisit, qui se in illud intrusit, &c. ut supra.*

And in the Per and Cui thus:

*Nisi per C. cui D. illud dimisit, qui se in illud intrusit, &c.*

And in the Post thus:

*Nisi post intrus. quam W. in illud fecit post mortem C. qui illud tenuit per legem Angl. post mortem D. quondam uxoris suæ, matris prædict' B. cujus hæres, &c. Et quod post mortem præd' C. ad præfat' B. reverti debet, ut dicit, & unde queritur, &c. & nisi, &c.*

B And if a Man doth intrude after the Death of Tenant for Life; then he in the Reversion shall have such Writ of Intrusion.

*Rex Vic', &c. Præcipe A. quod juste, &c. (a) reddat B. &c. in quod idem*

(a) But if the Writ be founded on the *clamat esse jus & hereditatem suam.* 10 H. 6. Lease of the Ancestor, it shall be *quod* 9. Yet if it be omitted, it is amendable.

*idem A. non habet ingressum, nisi per intrusionem quam in illud fecit post mortem C. cui præd' B. vel cui D. pater vel alius antecess. præd' B. cujus hæres ipse est, illud dimisit ad vitam ipsius C. ut dicit, & nisi, &c.*

And in the Per thus:

*In quod idem A. &c. nisi per C. qui illud ei dimisit, qui se in illud intrus. post mortem W. cui præd' B. vel R. pater vel alius anteces. præd' B. cujus hæres, &c. illud dimisit ad vitam ipsius W. &c.*

And in the Per and Cui thus:

*In quod, &c. nisi per C. cui D. illud dimisit, qui se in illud intrusit, &c.*

And in the Post thus:

*Nisi post intrus. quam D. in illud fecit post mortem I. cui B. vel alius antecess. præd' B. cujus hæres, &c. illud dimisit ad vitam ipsius I. Et quod post mortem ipsius I. ad præf. B. reverti debet, ut dicit, & unde queritur.*

And in the Register there are other Forms of Writs, where the Re-  
version of the Tenant is granted by Fine or otherwise, which shall be  
*ex assignatione.*

And the Heir in Tail shall not have a Writ of Intrusion; if a Man  
do intrude after the Death of Tenant in Dower, or of Tenant by the  
Curtesy, or after the Death of Tenant for Life, he in the Reversion in  
Tail shall not have a Writ of Intrusion, but he shall be put to his Writ  
of *Formedon*; for that Writ lieth for him who hath the Reversion in  
Fee-simple, or for Term of Life, and not for him who hath the Reversion  
in Tail or for Term of Years; for it lieth not but for him who  
hath a Freehold, after the Death of Tenant for Term of Life, or of  
Tenant in Dower, &c.

And he in the Remainder shall have a Writ of Intrusion, if a Man do  
intrude after the Death of Tenant for Life; and so the Assignee of the  
Remainder shall have such Writ.

If Lands be given to two, and to the Heirs of one of them, and he who  
hath the Fee dieth, and then the Tenant for Life dieth, the Heir of  
him in Remainder shall have such Writ.

*In quod, &c. nisi per intrusionem quam in illud fecit post mortem C. quæ fuit uxor D. quæ illud tenuit ad vitam suam ex dimiss. quam R. inde fecit eidem C. & præfat' D. quondam viro suo, & hæred' ipsius D. patris præd' B. cujus hæres, &c. ut dicit, & nisi, &c.* And the Process in that Writ is Summons, *Grand Cape* and *Petit Cape*.

### Writ of Cui ante Divortium.

THE Writ of *Cui ante Divortium* lieth, where the Husband alieneth  
the Wife's Land which she had in Fee-simple, or in Tail, or for  
Life, unto a Stranger in Fee-simple, in Fee-tail, or for Life; and af-  
terwards the Husband and Wife are divorced, then the Wife shall have  
that Writ against the Alience; and the Form of the Writ shall be such:



- G** Rex Vic', &c. Præcipe A. quod iuste, &c. redd' B. quæ fuit uxor D. unum messuagium cum pertin' in N. quod clamat esse jus & hæreditatem suam, & in quod, &c. nisi per prædict' D. quondam virum ipsius B. qui illud ei dimisit, cui ipsa ante divor' inter eos celebr' contradicere non potuit.
- H** And that Writ lieth in the Per, Cui, and Post, as doth the other Writ of Cui in vita.
- I** And if the Husband do alien unto an Abbot in Fee, and afterwards the Husband dieth, the Wife shall have a Writ of Cui ante Divortium, in the Post, against the Successor of the Abbot; and the Form of the Writ shall be thus:
- K** In quod idem Abbas non habet ingressum nisi post dimiss. quam prædict' D. quondam vir ipsius B. cui ipsa ante divor' contradic' non potuit inde fecit L. quondam Abbat de B. ut dic' & inde queritur, &c.
- And the Heir shall have a Sur cui ante Divortium, where the Wife dieth before the Action brought, as well as he shall have a Sur cui in vita: But of an Estate-tail, the Heir shall not have a Sur cui in vita ante Divortium, but shall be put to his Formedon in the Descender.
- L** And the Aunt and the Niece shall join in that Writ, as they shall do
- M** in a Sur cui in vita; and the Process is, Summons, Grand Cape and Petit Cape.

Writ of Causa Matrimonii prælocuti.

- A** **T**HE Writ of Causa Matrimonii prælocuti lieth, where a Woman giveth Lands unto a (a) Man in Fee-simple, unto the Intent that he shall marry her, and afterwards he will not marry within convenient Time, when he is required by the Woman. Then the Woman shall have that Writ; and the Form of the Writ is such: [205.]
- B** Rex Vic', &c. Præcipe A. quod iuste, &c. redd' B. unum messuagium, quod eadem B. ei dimisit causa matrim' inter eos prælocuti, quo eam duxisse debuit in uxorem, & nondum duxit, ut dic', &c.
- And in the Per and Cui thus:
- In quod, &c. nisi per C. cui prædict' B. illud dimisit causa matrimonii, &c. & non duxit, ut dicit, Et unde queritur, &c.
- C** And it seemeth, That that Writ lieth for the Woman, where she giveth Lands to a Man for Term of his Life, for the Intent to marry her, as well as where she giveth it in (b) Fee-simple. But if she giveth it to a Man in Tail to marry her, &c. altho' he will not marry her, it seemeth she shall not have that Writ against him, by that Means to avoid and defeat the Estate-tail; for that shall be contrary to the Statute of *Donis conditionalibus*. C. 2. part 74.
- And a Man upon a Condition in Law shall not make void the Statute. For the

(a) But he shall never have an Averment against a Deed without Plea. 14 E. 3. but adjudged *contra* on a Writ of Error. 12 E. 1. Feoffment 114. vide infra L.

(b) If it be not by Writing. Dyer 312. See 14 H. 8. 8. & infra. K.

3 & 4 Ma.  
Dy. 146.

But if he ex-  
press an En-  
try if he  
marry, then  
he may alien,  
but till Alie-  
nation he is  
seised *jure*  
*uxoris*.

5 E. 2. Br.  
Cond. 204.

5 E. 2. 24.

5 H. 4. 1.

8 E. 2. En-  
try 78.

17 Aff. pl. 20.  
N. Br. 155.  
Post. L.

14 H. 8. 19.  
*Brudnell*.

24 H. 8. 9.

It is a good  
Condition.

30 Aff. 17.  
Condit. 17.

5 Br. Con-  
dit. 119.

8 E. 2. En-  
try 78. ac. of  
a Condition  
expressed.

Note 3 & 4  
Ma. Dy. 146.  
one cannot

aver a Consi-  
deration a-  
gainst a Con-  
sideration ex-  
pressed by  
Deed. *Vid.*  
14 El. Dy.  
211, 212.

the Statute makes a Law certain by express Words of Gift in Tail. And then it is not Reason, that it should be aneanted by Intendment, or by a Thing averrable, which is not expressed, and shall be taken contrary to the Statute. And the Heir shall have that Writ as well as the Woman her self; and the Writ shall be,

*Præcipe A. &c. quod redd' B. &c. quod clamat, &c. & in quod non ha- D*  
*bet ingressum nisi per C. matrem prædict' B. cujus hæres ipsa est, quæ illud*  
*ei dimisit causa matrimonii, &c. & nondum duxit, &c. & nisi, &c.*

And it may be in the *Per*, *Cui* and *Post*, as the Case is. E

And also the Aunt and the Niece may join in the Writ.

(a) And if a Man do give Lands unto a Woman unto the Intent to F marry him, although that the Woman will not marry him, &c. he shall not have a Writ *Causa Matrimonii prælocuti* in that Case, and also that the Woman do after marry him; yet the Woman shall hold the Land to her and her Heirs, &c. and if the Husband do afterwards alien them, she shall have a *Cui in vita* for those Lands (b).

If a Woman do enfeoff a Stranger by Deed of Land in Fee, to the G Intent to enfeoff her, and one who will be her Husband; if the Marriage doth not take Effect, she shall have the Writ of *Causa Matrimonii prælocuti* against the Stranger, notwithstanding that the Deed of Feoffment be absolute; *quod vi. in Title Affise, 34 E. 3. lib. Affise.*

A Woman did enfeoff a Man upon Condition that he should take her H to Wife, and he had a Wife at the Time of the Feoffment, and afterward the Woman for not performing of the Condition, entred again into the Land, upon the second Feoffee, and her Entry was adjudged lawful, and the Condition, is good. *Anno 40 E. 3. lib. Aff. 40 Aff. pl. 13. 8 E. 2. Entry 78. 24 H. 8. Feoffments 40.*

And the Husband and Wife may sue that Writ of *Causa matrimonii I prælocuti* against another who ought to have married her.

And if a Woman maketh a Feoffment in Fee by Deed, reserving K Rent, then she shall not have that Writ of *Causa Matrimonii prælocuti* for the Rent reserved, because it is proved that the Reservation was the Cause of the Feoffment; but if she hath a Deed to shew and prove that the Feoffment was to the Intent that he should marry her, then she shall maintain her Action notwithstanding the Reservation made of the Rent. *Dyer 146, 312.*

And a Woman may sue *Causa Matrimonii prælocuti* without any Wri- L ting shewed to prove the same, where she maketh a Feoffment without Deed to a Man in Fee, to the Intent to marry her, &c. and the Process is Summons, *Grand Cape* and *Petit Cape*, &c. *14 H. 8. 30. 12 E. 1. Feoffments 114. Ant. A. N. Br. 135. con.*

(a) *Dyer 147.*  
N. Br. 135.

(b) *6 E. 2. Cui in vita. 24 H. 6. 1. 6 H. 4. 1. 5 E. 2. Cui in vita 24.*

Writ



## *Writ of Entry in Casu proviso.*

**M** **T**HE Writ of *Entry in Casu proviso*, is given by the Statute of Gloucester, cap. 7. and that Writ lieth where Tenant in Dower doth alien in Fee, for Life or in Tail, the Land which she holdeth in Dower; he who hath the Reversion in Fee, or in Tail, or for Life, shall maintain that Writ against the Alienee; and against him who is the Tenant of the Freehold, of the Land during the Life of the Tenant in Dower, &c. And the Writ may be made in the *Per*, *Cui* and *Post*; and the Writ shall be such:

*Rex Vic', &c. Præcipe A. &c. quod redd' B. &c. quod clamat, &c. & in quod A. &c. nisi per C. quæ fuit uxor D. qui illud ei dimisit, quæ illud tenuit in dotem de dono prædict' D. quondam viri sui, patris vel alterius antecessoris prædict' B. cujus hæres, &c. & quod post dimiss' per ipsum C. præf. A. contra formam statut. Glouc. de communi concilio regni nostri inde provisum, fact', in feod' præf. B. reverti debet per formam ejusdem statuti, ut dicit, & nisi, &c.*

And in the *Per* thus:

*In quod idem A. non habet ingressum nisi per C. cui D. quæ fuit uxor E. illud dimisit, quæ illud tenuit in dotem, & quod post dimiss'. &c.*

And in the *Post* thus:

*Præcipe A. quod, &c. redd' B. &c. quod clamat, &c. & in quod, &c. nisi post dimissionem quam C. quæ fuit uxor D. quæ illud tenuit in dotem de dono prædict' D. quondam viri sui patris prædict' B. cujus hæres ipse est, inde fecit F. & quod post dimission' per ipsam G. &c. (usque ibi) revertere debet per formam ejusdem statuti, ut dicit, & unde queritur, & nisi, &c.* [206.]

**A** And if a Woman do recover her Dower against the Heir, and afterwards doth alien in Fee, the Heir shall have the Writ of *Casu proviso*; and in the Writ he shall mention the Recovery, as he shall do in a Writ of *Entry ad communem legem*, upon an Alienation made by Tenant in Dower, &c. And although a Woman alien in Tail, or for Life, yet the Writ is always of one Form.

**B** If a Man grant the Reversion of Lands, which are holden of his Inheritance in Dower to another, and the Tenant attorneth, and afterwards the Tenant in Dower doth alien in Fee, the Grantee of the Reversion shall have such Writ *de assignatione*.

*Præcipe A. quod, &c. redd' B. &c. & in quod, &c. nisi per C. quæ fuit uxor D. quæ illud de prædict' D. tenuit in dotem de dono prædict' D. quondam viri sui ex assignatione, quam W. filius & hæres prædict' D. inde fecit præfat' B. & quod post dimission', &c.*

And if the Heir grant the Reversion in Fee, and the Tenant attorneth, and afterwards the Grantee granteth the same over, and the Tenant doth attorn; and afterwards the Tenant in Dower doth alien the Fee, the third Grantee of the Reversion shall have such Writ *De casu proviso*.

*Rex Vic', &c. Præcipe A. quod, &c. reddat B. &c. quod clamat, &c. & in quod, &c. nisi per, vel post dimissionem, &c. (as the Case is) quam C. que fuit uxor D. que illud tenuit in dotem de dono prædict' D. quondam viri sui de præfat' B. ex assignatione quam E. de quo præfat' C. illud tenuit in dotem ex assignatione F. de quo eadem C. illud tenuit in dotem ex assignatione quam G. filius & hæres prædict' D. inde fecit præf. F. inde fecit W. Et quod post dimiss. per ipsam C. præf. A. &c.*

If the Writ be in the *Per*, and if the Writ be in the *Post*, then the **C** Writ shall be,

*Et quod post dimissionem per ipsam C. reverti debet per formam, &c.*

And the Aunt and the Niece may join in that Writ where the Te-**D** nant in Dower doth alien in Fee, and they have the Reversion by De-**E** scent from their Ancestor, and the Process is Summons, Grand Cape, and **P** Petit Cape, &c.

### Writ of Entry in consimili casu.

The Writ is not main-  
tainable a-  
gainst Te-  
nants in Tail,  
after Possibi-  
lity of Issue  
extinct. Old  
Tenure.

13 E. 2.

*Entre conge-  
nable* 56.

14 E. 3.

Brief 283.

N. Br. 137.

Ant. 198.

3 E. 2. Entr.

*Exc.* 8. N.

11 E. 2.

Entry 68.

**T**HERE is another Writ of the like Nature, which is called a **F** Writ of *Entre in consimili casu*; and that Writ lieth where Tenant by the Curtesy, or for Life, or for another's Life, doth alien in Fee, (a) or in Tail, or for Life; now he in the Reversion, who hath an Estate therein for Life, or in Fee-simple, or (b) in Tail, shall have that Writ during the Life of the Tenant for Life, who aliened, and that Writ is not given by the Statute of *Gloucester*, which gave the Writ of *in Casu proviso*; but it is formed and granted upon the Statute of *Westminster* 2. cap. 14. *Which wills, that as often as it shall happen in the Chancery, that in one Case a Writ is found, and in the like Case falling, wanting the same Remedy; now the Clerks of the Chancery shall agree in the Making the Writ, and that appeareth, H. 3 E. 2.*

And if the Tenant by the Curtesy doth alien, he in the Reversion **G** shall have such Writ:

*Præcipe A. quod, &c. redd' B. unum Messagium, &c. quod clamat, &c. & in quod, &c. nisi per C. qui illud ei dimisit, qui illud tenuit per legem Angliæ post mortem E. quondam uxor' sue matris, proavæ, vel avæ prædict' B. cujus hæres ipse est, Et quod post dimissionem per ipsum C. præf. A. inde fact' in feodo ad præf. B. reverti debet per formam Statuti in consimili casu provisi, ut dicit, & nisi, &c. Et in quod, &c. nisi per C. cui D. illud dimisit qui illud tenuit per legem Angl'. Et in quod, &c. nisi post dimissionem quam C. qui illud tenuit per legem Angliæ, &c. ut supra, cujus, &c. inde fecit F. & quod post dimissionem, &c.*

And

(a) But not if he be Tenant after Possi-  
bility. 13 E. 3. *Entry cong.* 56.

(b) So for him who has a Fee-tail in  
Reversion. 21 E. 3. 11.

See a Writ against *J. S. In quo non habet  
ingressum nisi post a Lease to him made,*  
*&c.* 8 E. 2. Brief 810.



And if the Tenant for Life alien, then he in the Reversion shall have a Writ in this Form:

*Rex Vic', &c. Præcipe A. quod juse, &c. reddat B. unum messuagium, &c. in quod idem A. non habet ingressum nisi per C. cui prædict' B. illud dimisit. ad vitam ipsius C. & quod post dimissionem per ipsum C. præfat' A. inde fact' in feodo, ad præfat' B. reverti debeat per formam Statuti, &c. ut supra.*

And Note, That by that Writ it appeareth, that the Writ doth suppose, that the Tenant for Life doth alien in Fee; and although he grant but for Life, or in Tail, yet the Writ doth suppose that he alieneth in Fee, &c. but that is not material: For if it be in Fee, or in Tail, or for Life, it is a Forfeiture of his Estate. 38 H. 6. 3.

And so in the Case, in the Writ *in Casu proviso*, and in the Writ of *Entre ad communem Legem*, it supposeth the Alienation to be made in Fee, altho' it be but for Life, or in Tail, for that there is no other Form: And it may be made in the *Per*, *Cui* and *Post*, and that without Title made in the Writ, because it is of a Lease made by the Defendant himself to the Tenant that alieneth: But if the Father or other Ancestor lease for Life, and dieth, and afterwards the Tenant for Life alieneth in Fee, &c. now the Heir who is in the Reversion, shall have a Writ, which shall comprehend a Title in it; and shall be such:

*Rex Vic', &c. Præcipe A. &c. quod, &c. redd' B. unum messuagium, &c. quod clamat, &c. Et in quod, &c. nisi per C. & D. uxor' ejus, quibus I. pater, vel mater, vel alius antecess. prædict' B. cujus hæres ipse est, illud dimisit, ad vitam ipsorum C. & D. & quod post dimissionem, &c.* [207.]

And there the Writ doth suppose, that the Wife did demise it, &c. and yet she shall have a *Cui in vita* after the Death of her Husband, to recover the Freehold, notwithstanding the Alienation made by her Husband. And if Tenant for Life grant his Estate unto another, and the Grantee alieneth in Fee, &c. then the Writ shall be,

*In quod idem A. &c. nisi per C. cui D. qui illud tenuit ad vitam suam ex dimissione prædict' B. illud dimisit ad eundem terminum, & quod post dimisit. &c.*

**A** And if a Man lease Lands for Term of Life, and afterwards dieth, and his Heir grants the Reversion to B. and the Tenant attorn, and afterwards the Lessee for Life granteth his Estate over to one who alieneth to A. in Fee; now B. shall have such Writ:

*Præcipe A. quod, &c. redd' B. &c. in quod, &c. nisi per C. qui illud ei dimisit, qui illud tenuit ad vitam D. de præf. B. ex assign' quam I. filius & hæres R. qui quidem R. illum præf. D. dimisit ad eundem terminum, inde fecit præf. B. & quod post dimisit.*

If H. lease Lands unto R. for Life, and afterwards granteth the Re- 12 E. 2. En-  
try 69.  
version to B. in Fee, and R. attorn, and afterwards R. alieneth in Fee, B. shall have this Writ:

*Rex Vic', &c. Præcipe A. quod, &c. redd' B. in quod, &c. nisi per R. qui illud ei dimisit, qui illud tenuit ad vitam suam de præf. B. ex assign' quam I. qui illud præfat' R. dimisit ad eundem terminum, inde fecit præf. A. & quod post dimisit. &c.*

20 E. 2.  
Brief 849.

And if Lands be given unto two, and the Heirs of one of them, and B he who hath the Fee dieth, and afterwards the Tenant for Life alieneth in Fee, the Heir of him in the Remainder shall have this Writ :

*In quo, &c. nisi per C. qui illud ei dimisit qui illud tenuit ad vitam suam ex dimissione, quam H. inde fecerat eidem C. & D. & hered' ipsius D. patris prædicti B. casus heres ipse est, & quod post dimissionem, &c. (a)*

And by that appeareth, that he in the Remainder shall have a Writ C of *in consimili Casu*, if Tenant for Life alien in Fee.

Vide 3 E. 2.  
Entre 6. con.  
For it is not  
given by the  
Statute of  
Gloucester.  
But West. 2.  
cap. 24. sec  
206. fol.

And if an Abbot or Prior lease Lands for Life, and alieneth, and the Prior dieth, the Successors shall have this Writ :

*Præcipe A. quod, &c. redd' B. unum messuagium, &c. quod clam' esse jus Eccles. sue S. Thomæ Martyris de K. & in quod, &c. nisi per C. cui D. illud dimisit, qui illud tenuit ad vitam suam ex dimissione quam S. quondam Prior de K. præd' prædicti Prioris inde fecit præf. D. & quod post dimis. &c.*

And if Tenant in Tail maketh a Lease for Life, and the Tenant for D Life alieneth in Fee, the Tenant shall have a Writ *in consimili Casu*.

29 Aff. 62.  
21 E. 3. 11.  
Entry 10.  
7 E. 3. 45.  
31 E. 1.  
Entry 64.  
21 E. 3  
Entry 10.

And so it seemeth, if Tenant in Tail do lease the Land unto another for the Life of the Lessee, and dieth, and the Tenant for Life alieneth in Fee; the Heir in Tail may choose to have a Formedon, or to sue the Writ of *Consimili Casu*, living the Tenant for Life. For the Tenant in the Action shall not have the Plea to abate the Writ, to say, that he hath Title to have a Formedon of the Land, &c. But if Tenant in Tail lease Lands for the Term of his own Life, which is not any Descend, and afterwards the Tenant for Life doth alien in Fee, and the Tenant in Tail dieth, his Heir shall not have a Writ of *Consimili Casu*, but shall be put to his Formedon in that Case. For there he hath not Title to have any other Action by Colour of any Demise; but in the Case before, he had Title by Reason of the Discontinuance made for Life, to claim by Reason of the Right in Reversion descended to him, so that he had Right by Reason of the Reversion in his Father reserved upon the Lease, and also by Reason of the Title of the Entail to choose what Action he would have; *tamen Quære*.

7 E. 2.  
Entry 7.  
7 E. 3. 17.  
Entry 61.

A Lease was made to one for Term of Life, the Remainder to another in Fee, and afterwards the Tenant for Life did alien in Fee, for which he in Remainder brought a Writ *de consimili Casu*, and the Writ was abated. *Pasch. 7 E. 3.* But the Court there said, that the Cause was, because he in the Remainder was not to have the Remainder *in facto*, until it fell, and that after the Death of Tenant for Life; and it is not like unto a Reversion: But the Law is not taken so at this Day, but that he in the Remainder hath the Remainder vested in him, as he in the Reversion hath the Reversion: For he shall have an Action of Waste, and shall enter for the Alienation of his Tenant, as well as he in the Reversion, and therefore it followeth, that the Remainder is in him

18 E. 2. Entry 74. Nat. Brev. 138. contr.

*in facto*, for which Cause I conceive, that Judgment was not rightly given. And *Hill. 18 E. 2.* it was holden by Justice *Iherle*, that the Writ F did lie for him in the Remainder, &c. And the Heir in Tail brought a Writ

(a) See *ibid. Aff. 11. 91.* That the Father may enter for the Forfeiture.



Writ of *Consimili Casu* upon an Alienation made by Tenant by the Courtesy, and the Writ was maintainable. T. 31 E. 1.

Writ of Entry ad communem Legem.

**G** THE Writ of *Entrie ad communem Legem* lieth, where Tenant in Dower, or Tenant by the Courtesy, or for Life, do alien in Fee or for Life of another, or in Tail, the Lands which they hold, &c. (a) after their Death, he in the Reversion, who hath it in Fee or for Life, shall have that Writ of *Entrie ad communem Legem*; and the Writ shall be such, &c.

**H** Rex Vic', &c. *Præcipimus A. quod iuste, &c. redd' B. &c. quod clamat esse jus & hæreditatem suam, & in quod idem A. non habet ingressum, nisi per C. quæ fuit uxor D. quæ illud ei dimisit, quæ illud tenuit in dotem de dono prædict' D. quondam viri sui patris vel alter' antecess. prædict' B. cujus, &c. ut dicit, &c. & nisi, &c.* [208.]

**A** And that is a Writ for the Heir in the Reversion, who hath the same by Descent, and may be in the *Per, Cui* and *Post*.

**B** And if a Woman recover Dower, and afterwards alieneth in Fee, 4 E. 2. Brief and dieth: Then the Writ of *Entrie ad communem Legem* shall mention 794 the Recovery, &c. And if the Tenant by the Courtesy alieneth in Fee, and dieth, the Heir shall have such Writ:

*Præcipe quod, &c. redd' B. &c. quod clamat, &c. in quod idem A. non habet ingressum nisi per C. qui illud tenuit per legem Angliæ post mortem D. quondam uxoris suæ, matris præd' B. cujus hæres ipse est, ut dicit, &c.*

And may be brought in the *Per, Cui* and *Post*, as the Case is.

And if Tenant by the Courtesy alien the Fee, and dieth, he in the Reversion who is Heir in Fee-simple, may sue that Writ, or an Affise of Mortdauncestor given by the Statute of Gloucester, cap. 3.

**C** And if Tenant for Life alieneth in Fee, and dieth, he in the Reversion may have that Writ in divers Forms. One, if he have the Reversion by Descent, the Writ shall be,

*Præcipe A. quod, &c. redd', &c. quod clamat, &c. & in quod idem A. non habet ingressum nisi per C. cui prædict' B. vel C. pater, vel alius antecess. prædict' B. cujus hæres, &c. illud dimisit ad vitam ipsius C. ut dic', &c.*

And he may leave out these Words in the Writ, *Quod clamat esse jus & hæreditatem suam, &c.* when the Demandant made the Grant to the Tenant for Term of Life who aliened, &c.

**D** And that Writ may be in the *Per, Cui* and *Post*, as the Case is.

**E** And he may bring a Writ of *Ad terminum qui præterit* if he will, if the Tenant for Term of Life doth alien, and dieth, as it shall please him.

And

(a) And yet the Death shall not be shewn by the Writ. 16 E. 3. Brief 667.

And if Tenant for Term of Life do grant over his Estate unto another, and he in the Reversion granteth the Reversion in Fee, and the Tenant doth attorn; and afterwards the second Grantee doth alien in Fee, the Grantee in the Reversion shall have such Writ:

*In quod idem A. non habet, &c. nisi per C. qui illud ei dimisit, qui illud ad vitam suam tenuit de præf. B. ex assignatione quam I. qui illud præf. C. dimisit ad eundem terminum, inde fecit præf. B. ut dicit.*

And it may be in the *Per*, *Cui* or *Post*, as the Case is, and in the *G* Writ which is in the *Post*, shall be this Clause:

*Et quæ post (a) mortem prædicti C. ad præfatum B. reverti debet per formam assignationis præd' ut dicit, & unde queritur, &c. ut dicit, &c.*

## Writ of Cessavit.

Tenant in Dower shall have a *Cessavit*, and lay the Seisin in her Husband: 1 E. 1. *Cessavit* 54. 43 E. 3. 15. 9 H. 7. 16.

**T**HE Writ of *Cessavit* lieth in divers Ways. For one Writ is *H* where there is Lord and Tenant, and the Tenant will not pay (b) his Rent, nor do his Services, as Suit, &c. to his Lord as he ought to do, nor hath sufficient Goods or Chattels upon the Land to be distrained for the Rent or Services behind; but suffereth the Lands to lie fresh, not occupied for two Years following together; then the Lord of whom the Lands are holden, may have the Writ against the Tenant, and if it be found for him, he shall recover the Land, if the Tenant will not find Sureties to pay the Rent then after; and that Writ is of such Form:

He for Life shall have *Cessavit*, but not Lessee for Years, for that is a *Præcipe*. 12 R. 2. *Cessavit* 45. *Cess.* of a Rent. 5 H. *Cessavit* of Advowson. 23 E. 3. *Cessavit* 46. 43 E. 3. 15 acc.

*Rex Vic', &c. Præcipe A. quod, &c. redd' B. unum mesuagium, &c. quod idem A. de eo tenet per certa servitia, & quod ad ipsum B. reverti debet per formam Statuti de communi Concilio regni nostri inde provisi, eo quod prædict' A. in faciend' prædict' (c) servitia per biennium jam cessavit, ut dicit, &c.*

And

(a) But *Note*; The Writ in the Degrees does not make Mention of the Death of the Tenant for Life. See 16 E. 3. *Brief* 661.

(b) *Note*; If the Lord brings a *Cessavit*, and supposes the Tenure to be by 2 s. Rent where he holds only by Fealty, and the Tenant traverses the Tenure, and 'tis found against him, he shall be charged with the Rent. 24 E. 3. 72.

He may tender the Arrears without saving of his Default. 27 E. 3. 89. The Tenant took the Quantity of the Services by Protestation, and pleads over, &c. and after made Default, and at the *Petit*

*Cape*, tenders the Arrears according to his Protestation, and there they were at Issue on the Quantity, &c. *Note*; If the Tenant will save his Tenancy, and tenders all the Arrears, he ought also to tender Damages. 21 E. 3. 23. taxed by the Court.

In a *Cessavit* for Suit of Court, he tenders Damages for not coming, by Tax of the Court. 17 E. 3. 17. and 'tis no Plea, that Part of the Services are not in Arrear. 30 E. 3. 22.

(c) See a *Cessavit* by several *Præites* against A. and B. that A. and B. *de eo tenent & reverti debent eo quod A. and B. cessaverunt*. 20 E. 2. *Brief* 826.



And that Writ is given by the Statute of *West. 2. cap. 21.* and may be brought in the *Per, Cui* and *Post*.

The *Per* thus: *In quod idem A. &c. nisi per C. qui illud dimisit, qui illud de præf. B. tenuit per certa servitia, & quod ad ipsum B. &c. (usque ibi) provisi, eo quod præd' A. vel eo quod præd' C. in faciend' prædict' servitia per biennium jam cessavit.*

48 E. 3. 4.  
The Seisin was alledged in the Feoffor and the Cesser in the Feoffee, 39 E. 3. Br. Cess. 19. acc. Note, that if the Feoffee himself cease, the Writ shall not be in

And it ought to be alledged in the Writ by whom the Ceaser was.

And in the *Per* and *Cui* thus: *In quod, &c. nisi per C. cui D. illud dimisit, qui illud de præfat' B. tenuit, &c.*

(a) And in the *Post* thus: *In quod, &c. nisi post dimissionem quam A. qui illud de præfat' B. tenuit per certa servitia inde fecit A. de E. & quod ad ipsum R. reverti debet, eo quod præd', &c. ut dicit, &c. Et unde queritur, &c. nisi, &c.*

the *Per*, but general; *Cont.* If the Feoffor cease before the Feoffment; so if the Disseisee cease before the Disseisin, the Writ shall be in the *Post*. 21 E. 3. 44. Br. Cess. 17.

And there is another Form of *Cessavit*, without making Mention of any Entry; thus:

*Præcipe W. de F. & A. uxori ejus quod, &c. reddant Abbati de S. duo mesuagia, quæ I. de B. de eo tenuit per certa servitia, & quæ ad ipsum Abbatem, &c. (b) eo quod prædict' W. & A. in faciend', &c.*

29 E. 3. Cessavit 43.

And the *Cessavit* lieth for Suit of Court; (c) but the Donor in Tail shall not have a *Cessavit* against the Tenant in Tail: But if a Man maketh a Gift in Tail, the Remainder over in Fee unto another, or unto the Right Heirs of the Tenant in Tail, there, in that Case the Lord of whom the Lands are holden *immediate*, shall have a *Cessavit* against the Tenant in Tail, because that he is Tenant to him, &c. 33 H. 6. 53. 28 E. 3. 9. 19 E. 3. Cess. 30.

19 E. 3. Brief 149.  
17 E. 3. 57.  
33 H. 6. 45.  
13 E. 3. Cess. 29.  
44 E. 3. 27.  
14 H. 6. 15.  
19 E. 2. Cessavit 30.  
28 E. 3. 95.  
ib. 34, & 35. acc. But

there it is said, that if the Tenant cease, and makes a Gift in Tail, that the Lord may have *Cessavit* in the *Per*.

And

(a) 20 H. 6. 28. A Recovery in the *Post* against a Feme Covert.

(b) *eo quod prædict' W. and A. &c.* See such a Writ awarded good; for by *Parring*, he cannot suppose none to be his Tenant, but him by whose Hands he was seised. 11 E. 3. Brief 477. 14 E. 3. Brief 269. and see accordant; for it may be *A.* is in by Disseisin, and yet *B.* shall be said Tenant to the Lord; so if the same Tenant leases for Life, or in Tail to *A.* who cesses, no other Writ lies; wherefore the Writ was awarded good. 21 E. 3. 44. See 39 E. 3. 13. And see what Writ does not lie in this Case *Kelw.* 105. 131. 14 E. 2. Brief 815.

(c) So 'tis adjudged; yet if the Lord recovers, the Issue shall have a *Formedon*. 28 E. 3. 45. and it seems on the same Reason, if the Tenant makes a Lease for Life, the

Remainder in Fee, a *Cessavit* lies against the Lessee for Life, supposing him to be his Tenant. But it seems, tho' he does recover, yet after the Death of Tenant for Life, he in Reversion shall have (avoid) his Recovery against the Lord; but if the Tenant makes a Lease for Life, or a Gift in Tail, saving the Reversion to himself, if afterwards a Cesser be, the Lord shall have a *Cessavit*; but he ought not to suppose, that the Tenant in Tail is his Tenant; for then his Writ shall abate; but he shall have the Writ here next adjacent. And it seems in such Case, that he in Reversion is Tenant to the Lord, and a Default in him of non Payment, as well as in the other, shall bind him, and so the Books seem to intend. 28 E. 3. 95. 96. 45 E. 3. 27. So a Recovery in a *Cessavit* against

10 E. 4. 1.  
and 2. 37 H.  
6. 45.

[209.]

he pleads that  
the Land  
was sufficient  
to his Distress  
without  
saying overt,  
and good :

2 H. 4. 5.

35 H. 6.

Cess. 7. acc.

35 H. 6. Cess.

7. ac. But if

a Man occupy

at Will,

his Goods

are sufficient.

3 E. 2.

Avow. 206.

Br. App. 20.

3 E. 3. 47.

Cessavit. 40.

4 H. 6. 29.

10 H. 7. 24.

45 E. 3. 27.

14 H. 6. 25.

48 E. 3. 4.

And if a Man cease to pay his Rent and Services for two Years, and K inclose the Land, so as the Lord cannot distrain, if he break not the Gates, or the Hedges of the Land which make the Inclosure, the Lord shall have a *Cessavit*, although the Tenant hath sufficient Cattle upon the Land to be distrained for the Rent. For the Land ought to be open, and also there ought to be sufficient to distrain for the Rent, &c. But the Land is not open to his Distress, &c. and so open to his Distress, is a good Plea, without saying more in such Case. *M. 2 H. 4. 5.*

2. 30 H. 6. Cess. 7.

And if the Cattle of a Stranger do escape into the Lands, those A Cattle are not sufficient or overt to his Distress: But if they be the Tenant's Cattle, it is otherwise. 40 E. 3. 11. 50 E. 3. Cess. 10.

If three Men hold by one entire Rent, as by a Horse, and the Lord B doth recover two Parts of the Land against two of them, and the third findeth Sureties, &c. the whole Rent is extinct by that Recovery. 14 E.

3. Cess. 28. 13 E. 3. 47. 10 H. 4. 1.

And a Man shall not have one *Cessavit* for Lands which are holden C by several Services; but he ought to sue several Writs (a). 20 E. 3. Cess. 23. 11 E. 2. Cess. 50. 14 H. 6. 25. 28 E. 3. 9. 45 E. 3. 27. 20 H.

6. 46. *Ant.* 179.

(b) If the Lord do distrain pendant his Writ of *Cessavit* against his D Tenant, the Writ shall abate.

And the Lord shall have a Writ of *Cessavit* against Tenant for Life, E where the Remainder is over in Fee to another (c). 20 E. 3. Cess. 32. 33. 38. 48 E. 3. 4. 12 E. 4. 7. 5 E. 3. 70. 6 E. 3. 45. 4 Co. 11. b. 23 E. 3. 21. Cess. 21.

### (a) The

against a Disseisor, shall bind the Disseisee. 20 H. 6. 28. a Recovery against a Feme Covert binds the Husband. 12 E. 4. —

A Recovery against the Husband and Wife binds the Wife. See 3 E. 3. 26. *contr.* in a *Cessavit*. 7 H. 4. 20. 10 H. 6. 5. Tenant for Life cesses, if the Lord recovers against him, it shall not bind him in Reversion, or Remainder. 28 E. 3. 95. 45 E. 3. 23. but during the Life of the Lessee, he shall be ousted of Waste or Entry, *in simili casu*. Note; Feoffee or Tenant for Life shall not have Aid of his own Cesser. 28 E. 3. 96. *contr.* *Panton*. 3 E. 3. 26. If A. Tenant of 3 Acres cesses, and aliens to 3 several Men, an Acre to each, 3 several *Cessavits* lie, and there shall be special Counts; but if he leases one Acre to B. for Life, and another to C. in Tail, and afterwards cesses, a *Cessavit* does not lie against B. or C. as to those 2 Acres, but he shall have a *Cessavit* for the third Acre, and count specially. Note; By the Cesser of

the Mesne, a *Cessavit* does not lie for the Lord, altho' the Mesne after the Cesser do purchase the Tenancy. *Kelw.* 105.

(a) See 20 E. 3. *Cessavit* 33. accordant 21. The Tenant says, that the Demandant then or before the Writ purchased, took a Distress for the Services in the mean time arrear, and shewed what Distress. *Parning*: Will you say, that the Distress was sufficient for the Rent arrear? *Rolf* agreed to say 'twas sufficient. *Gra.* had you no Distress? See 11 E. 3. *Cessavit* 2.

(b) See 21 E. 3. 18. Where Acceptance of Services pending the Writ shall abate it, and falsify the Judgment had against the Feoffor.

(c) He shall have a Writ, supposing that he held of him and cessed. 45 E. 3. 27. and so held on the same Reason. 28 E. 3. 95. But if the Tenant leases for Life generally, saying the Reversion to him, a *Cessavit* lies, but he ought not to suppose, that the Lessee for Life is his Tenant.



- (a) The Quantity of the Service is not traversable in a *Cessavit*, but the same shall be taken by Protestation. 2 E. 3. 28.  
8 E. 3. 47.  
Nat. Br. 139.  
20 E. 3. Cef.  
47. *Supra* B.  
48 E. 3. 4.  
Cef. before  
Seisin: 33  
E. 3. *Wilby*  
Cef. 42.  
20 E. 3. Cef.  
47. 11 E. 3.  
Cef. 50. 13  
E. 2. ib. 51.  
26 E. 3. Cef.  
61. 7 H. 4.  
20.
- The Seisin of the Services is not traversable in a *Cessavit*, but in *Cessavit* generally the Tenure is traversable.
- F The Aunt and Niece shall not join in a *Cessavit* for a Cesser made before the Title accrued to the Niece: But for a Cesser in both their Lives they shall join in a *Cessavit*; *Aliter* of Jointenants. *N. Br.* 139.
- And a Man may have a *Cessavit* against several Persons, and several Tenants by several *Præcipes*, &c. but not by one *Præcipe*.
- G A *Cessavit* doth not lie for him in the Reversion against Tenant for Life, nor against Tenant in Dower, but against Tenant by the Curtesy by the Lord Paramount, because he is Tenant to the Lord Paramount: *Tamen Quære* of that Case. But Tenant by the Curtesy, Tenant in Dower, or Tenant for Life, shall have a *Cessavit* against the Tenant who ceaseth.
- H It is a good Plea in a *Cessavit* to say, that he did not cease for two Years before the Writ brought.
- I And by the Opinion of *Thorpe* and *Hankford*, a Man shall not have a *Cessavit* against an Abbot or a Prior of the Lands of their Foundation; but I know no Difference but that the Lord shall have a *Cessavit* against an Abbot or a Prior as well as against others, of the Lands which he holdeth of them by Rents or other Services; but for the Lands which they hold in *Frankalmoigne* a *Cess.* doth not lie for not doing the Service, neither doth a *Cessavit* lie for not doing Homage or Fealty. 18 Aff. 1.  
Br. Cef. 20.
- K And if a Man holdeth Lands in several Counties by one Tenure and one Service, if he cease, &c. a *Cessavit* doth not lie. *Quod vi. M.* 18 E. 3. *t. Affise* (b). Post 211. E.  
6 H. 7. 2. 7.  
3 H. 6. 45.  
18 Aff. pl. 1.  
18 E. 3.
- L And there is another Writ of *Cessavit* grounded upon the Statute of *Westm.* 2. cap. 41. That if a Man give Land unto a religious House, or unto another, to find a Chaplain to sing Divine Service, or to find certain Tapers to burn before such an Image, or to distribute certain Bread and Beer every Week unto poor Men. Now if these Services be not done for two Years, nor sufficient Distress upon the Lands for the Time to distrain for those Services, then he or his Heir who gave the Lands, shall have a Writ of *Cessavit*, thus:
- Rex Vic', &c. Præcipe S. Episcopo Wigorn' quod, &c. redd' H. Comiti D. unum mes. &c. in villa de W. quod M. nuper Comes D. frater præd' H. cujus hæres ipse est, dedit W. quondam Episcopo W. & successoribus suis Episcopis loci præd' ad celebrandum annuatim obitum I. fratris & B. matris præd' T. & etiam obitum ejusdem T. & R. de H. post eorum decess. Et quod ad præf. Comitem reverti debet per formam, &c. in quod præd' Episcopus in celebrand' obitum præd' per biennium jam cessavit, ut dicit, T. &c.*

Q q q

Et

(a) But it seems he may plead, that he held this Land and others by the same Services, as well as in an Avowry. 2 E. 4. 27. 18 E. 4. 17. 23 E. 3. 21.

(b) In *Cessavit*, the Defendant pleads, that the Plaintiff had distrained for Fealty pending the Writ, and thereupon Issue joined. 20 E. 3. Cef. 33. *Vide Ant.*

*Et aliter pro Chantaria: Præcipe Abbati de N. quod, &c. redd' B. & C. uxori ejus unum mes. &c. quod R. proavus præd' C. cujus hæres (a) ipse est, dimisit E. quondam Abbati de N. vel eidem Abbati & success. suis Atlatib' de N. ad inveniend' quendam Canonicum pro animabus antecess. & success. ejusdem R. in Abbatia de N. divina celebrant'. Et quod ad præf. B. & C. reverti debet per formam statuti de communi concilio regni nostri super hujusmodi dimiss. provisi, eo quod præd' Abbas in inveniend' præd' Canonicum per biennium jam' cess. ut dicit; & nisi, &c.*

(b) And the like Writ may be sued against a Parson for Lands given M to his Predecessor in Fee, to say Divine Service in such a Chapel from three Weeks unto three Weeks.

(c) And so a Man shall have such Writ for Lights, or for drinking N for the Poor, or other Almsdeeds, if the said Almsdeeds be withdrawn for two Years together.

And where a religious Man, or other spiritual Person bringeth that Writ of Cessavit, it shall not be said in the Writ, *Quod clamat esse jus & hereditatem suam, &c.*

And a Man shall have a Cessavit for not doing of several Things which he ought to do thus:

[210.] *Præcipe A. &c. quod, &c. reddat B. &c. quod T. proavus prædict' B. dedit W. quondam rectori, &c. & success. suis rectorib', &c. ad inveniend' quendam Capellanum divina pro animab' antecess. ejusdem T. in Eccles. &c. celebrantem, & duos cereos arsuos toto tempore, quo Missa illa dicitur. Et quod ad ipsum B. reverti debet, eo quod prædict', &c. in inveniend' prædict' Capellanum, & cereos per biennium jam' Cessavit, &c.*

And the like Writs may be made in the *Per, Cui* and *Post*.

There is another Writ of Cessavit founded upon the Statute of *Glocest.* A c. 4. where a Man giveth certain Lands in Fee-farm, to find him certain Estovers to burn in the Winter, &c. or clothing, or to pay the fourth Part of the Value of the Land yearly, and afterwards he ceaseth, and lets the Land lie fresh, not manured for two Years together; then he or his Heir who gave the Land, shall have the Writ of Cessavit which followeth, *viz.*

*Rex Vic', &c. Præcipe A. quod, &c. reddat B. unum mes. &c. quod idem B. ei dimisit ad feodi firmam, reddendo inde per annum eidem B. tertiam partem vel quartam partem veri valor' mesuag' prædict' & quod ad ipsum reverti debet per formam Statui de communi concilio regni nostri inde provisi, eo quod' præd' A. in solutione prædict' firm' per biennium jam' Cess. ut dicit, & nisi, &c.*

And

(a) See this Writ affirmed good in all Points. 30 E. 3. Brief 29.

(b) Note 28 E. 3. 96. and 3 E. 3. 26. A Recovery was against a Parson on such a Cessavit de Cantuario, and held it should bind his Successors. 7 H. 4. 20. 10 H. 6. 5. but *contr.* of a Cessavit per biennium. 3 E. 3. 26. but by the Justices, a Cessavit de Cantuario does not lie for Lands that are Par-

cel of the Foundation of the Priory or Chantry. 7 H. 4. 20.

(c) *Quare*, if the Tenant may tender the Arrears, and to whom, and by *Hankf.* it shall be to the Demandant, but per *Thirn.* not so in a Cessavit of a Chantry. 12 H. 4. 24. See tender of Arrears of Houses and Chantry Lands, according to the Discretion of the Justices. 14 H. 4. 4.



And in the *Per* thus: *Et in quod idem A. non habet ingress. nisi per E. patrem præd' B. cujus hæres ipse est, qui illud ei dimisit ad feodi firmam. Vel sic in the Per and Cui; Nisi per D. cui præd' B. vel C. pat' præd' B. cujus hæres ipse est, illud dimisit ad feodi firmam.*

And in the *Post* thus: *Nisi post' dimiss. quan. præd' B. vel C. pat' præd' B. cujus hæres ipse est, inde fecit D. ad feodi firmam, &c. cess. ut dicit, & unde queritur, &c. & nisi, &c.*

**B** And if a Woman give Lands in Fee-farm, rendring to her the Moie-ty, or the third Part of the Value, and afterwards taketh Husband, and the Tenant ceaseth for two Years, and suffereth the Land to lie fresh, and doth not pay the Rent, the Husband or Wife shall have a Writ of *Cessavit*, and the Writ shall suppose *Quod ad prædict' A. & B. (his Wife) reverti debet*, and not the Wife only.

**C** And Note, That these Gifts in Fee-farm, to render the third Part, <sup>45 E. 3. 15.</sup> or the fourth Part, or to find a Chaplain to say Divine Service, or to <sup>Ant. 208.</sup> find him Clothing or Estovers, or to distribute, &c. upon which a Writ of *Cessavit* lieth, it behoveth that this were made before the Statute of *Quia emptores terrarum*, &c. upon which Feoffments a Tenure is reserved and implied in the Gift. But if a Man at this Day after the Staute of *Quia emptores*, will give Lands in Fee-farm to render the third or the fourth Part of the Value of the Land, or to find a Chaplain, &c. if the Tenant ceaseth, &c. the Donor nor his Heir shall not have a Writ of *Cessavit*, because there is not any Tenure betwixt them. *Quod vide M. 45 E. 3. t. Cess.*

**D** But if a Man giveth Lands in Tail at this Day to find a Chaplain, <sup>Ant. 208.</sup> or to render a third Part to the yearly Value, or to find Estovers <sup>209 N. B.</sup> yearly, if the Tenant ceaseth of these Services, it is a Doubt whether <sup>140.</sup> the Donor shall have a *Cessavit* to recover the Lands.

And it seemeth that the Donor shall have a *Cessavit*; for a Writ of *Cessavit* is given by the Statute of *West. 2. cap. 41.* for Lands given to find a Chaplain, or to find Tapers, or to distribute Alms to poor Men. <sup>N. B. 141. D.</sup> But then it seemeth that the same is intended of Gifts in Fee-simple, <sup>209.</sup> because that the Statute of *West. 2. cap. 41.* saith,

*That an Action shall lie for the Donor or his Heir to demand the Lands so given in Demesn, as it is appointed in the Statute of Gloucester of Tenements demised to do, or render the fourth Part of the Value, or more, and upon which Feoffments a Tenure was reserved and implied, because the Statute of Quia emptores, &c. was made after the Statute of Westm. 2.*

And also before the Statute of *Quia emptores terrarum*; if a Man make a Feoffment in Fee, and doth not say of whom the Feoffee shall hold, &c. then the Feoffee ought to hold of the Feoffor and his Heirs. By which it appeareth, that if a Man at the Time of the making of the Statute of *W. 2.* gave Lands to hold in Fee-farm, rendring the Value, or the third Part, &c. that he held of the Feoffor and his Heirs, although that no Tenure was expressed therein. And the Statute of *Gloucester.* was made *Anno 6 E. 1.* and the Statute of *West. 2.* made *Anno 30 E. 1.* and the Statute of *Quia emptores terrarum*, was made *Anno 18 E. 1.* And therefore if a Man maketh a Feoffment in Fee at this Day,

to find Tapers burning, or to render the third Part of the Value, or the like Services, he shall have an Action of Covenant upon that Feoffment, if it be made by Deed indented, and no other Remedy for the same, as I conceive.

7 R. 2. Cess.  
18. N. B.  
141.

And if Land be given before the Time of Memory to find a Chaplain to sing in his Chapel within his Manor every Week; now by the Statute no Man shall have a *Cess.* for the Cessor of such Service, but the Donor or his Heir; but upon that special Matter, he shall have a special Writ for him who is seised of the Manor, if he and his Ancestors have been seised of the Manor Time out of Mind, against him who ought to do Service. *T. Anno 7 H. 2.*

Ant. 209. I.

And a *Cessavit* doth not lie against an Abbot or Prior for a Cessor of Services of Lands which they hold in *Frankalmoigne*, because no Service certain is expressed in the Gift. Also it appeareth before the Statute, that the Lord could not have a *Cessavit* against the Tenant, but that he might seise the Lands for the Arrearages of the Rent or Services by Judgment of the Court, if it were found that they were behind, *Quod vi. P. 20 H. 3.* But at this Day he cannot do so, but bring a *Cessavit.* *10 H. 3. Cess. 60.*

### Writ of Contra formam Collationis.

Vide 2 & 3  
Ma. Dyer  
109.  
Yet it seems  
by Br. Ali-  
enation 15.  
That Bishop,  
Dean, and

THE Writ of *Contra formam Collationis* lieth, where a Man giveth (a) Lands or Tenements to an Abbey, or other House of Religion before the Statute of *Quia emptores terrarum*, to hold of him in *Frankalmoigne*, and afterwards the Abbot or the Convent do alien the same Land unto (b) another in Fee. Now he who gives the Land, or his Heir, may sue this Writ of *Contra formam Collationis*.

Chapter, and others who are not religious, are not within this Statute. *40 E. 3. 27.* The Writ doth not lie but where the Land is given in *Frankalmoigne*.

[211.]  
Bro. Contr.  
formam 501.  
23 E. 3.  
Contr. form.  
pl. 3.

(c) The Donor or his Heir may sue that Writ of *Contra formam Collationis*, and that Writ always ought to be sued against the Abbot who aliened, or his Successor, and not against the Tenant of the Land. But when he hath recovered the Land against the Abbot or his Successor, then he ought to sue forth a *Sci' fac'* against the Tenant of the Freehold of the Land, and the Tenant may plead in bar Matter, which may prove that the Demandant hath no Title, or that he hath released his Title. And if he who recovereth by the *Contra formam Collationis* doth enter upon him who is Tenant of the Freehold of the Land, then it seemeth the Tenant shall have an Assise against him.

23 E. 3. pl. 3.  
9 H. 7. 16.

And

(a) So it extends to Lands given by others, as well as to those given by the Founder; *contr. 33 H. 6. 6. per Moyle.*

(b) See *24 E. 3. 71.* It seems, that if a Tenant in *Frankalmoigne* of an Advowson of the King, aliens for 9 s. the King may

present. *Dyer 109.* Alienation in Tail is within the Statute.

(c) See *13 E. 3. 5. 2 H. 4. 12.* that it does not lie against the Successor, upon the Words of the Writ given by the Statute, per *Thim. and Hankf.*



- C And that Writ of *Contra formam Collationis*, lieth only for him or his Heirs, who gave the Land in *Frankalmoigne*, and not by any Stranger. But if he who ought to have the Action dieth, and doth not bring any Action for the same, yet his Heir may bring the Action for to recover the Land. For the Alienation doth give Right and Title to him who gave the Lands, or unto his Heirs for to recover the Lands, and to have the Lands again for that Alienation. And it lieth against the Successor upon an Alienation made by his Predecessor. And yet such Writ brought against the Successor, upon the Alienation made by the Predecessor, was abated, *H. 17 E. 3.* But yet notwithstanding it seemeth the Writ well lieth, because that the Right is given to him who gave the Lands, and unto his Heirs, to have the Lands again by the Statute, and that Right cannot die. For the Heir shall have the Action upon the Alienation made in the Life of the Father, because the Right of the Action doth descend, and by the same Reason the Heir of the Donor shall have the Action against the Successor upon Alienation made by the Predecessor, because the Right doth accrue to the Donor or his Heir by Alienation, for which Cause it is Reason that he have the Action against the Successor to recover that Right, and to prove the same; the Form of the Writ in the Register is such:
- Rex Vic', &c. Præcipe Abbat' de N. &c. quod, &c. reddat B. unum mesuag', &c. quod eidem domui collatum fuit in liberam eleemosynam per præd' B. vel per H. patrem præd' B. cujus hæres ipse est, & quod per alienationem per ipsum Abbatem, vel per R. quondam Abbatem de N. prædecess. prædict' Abbatis contra formam collationis præd' inde factæ in feodum ad præfat' R. reverti debet, ut dicit, &c. nisi, &c.*
- And that Writ of *Contra formam Collationis* doth not lie, although the Abbot alien in Fee, &c. but where the Abbot and Convent in Fee, &c. *21 H. 4. 68. Hankford.*
- E And if a Man do recover in Value Lands against an Abbot, who entreteth in the Warranty and loseth, &c. the Founder shall have a *Contra formam Collationis* upon the same, as it appeareth in the Book. *M. 45 E. 3. 19.* *Old Ass. 14. It lieth of a Rent.*
- F If an Abbot and Convent alien an Advowson in Fee, at the next Avoidance the Founder or his Heir may present unto the Advowson, because they cannot sue a *Contra formam collationis*. *20 E. 3. Con. form. Coll. 6.* *28 E. 3. Contra formam collationis 6.*
- G (a) And if an Abbot and Convent alien the Lands which are given by the King in *Frankalmoigne*, some say that the King may enter; but it seemeth that he ought for to sue forth a *Scire facias* upon an Office found of the said Alienation. See the Case, See *M. 45 E. 3. 18.*
- H (a) And that Writ of *Contra formam collationis* is given by the Statute of *Westm. 2. cap. 41.* and the Process is Summons, *Grand Cape* and *Petit Cape*. *33 H. 6. 6. con.*
- I And a Writ of *Contra formam collationis* lieth as well for Land which was not given for the Foundation of the Monastery, if it were given in *Frankalmoigne*, as for Lands of the Foundation; but it ought for to be given *33 H. 6. 6. Litt. 31. 10 H. 7. 23. 27 H. 26.*

(a) Note; The King as Founder shall have the Benefit of this Statute on an Alienation made by the Bishop, with Consent of the Dean and Chapter in Fee-farm.

*Dyer 109. 38 H. 8. c. 30. and 35 H. 8. c. 15.* See the Proviso there on Erection of a new Chapter. *Quare, 5 Co. cited in the Margin of Dyer ibid.*

given in *Frankalmoigne* before the Statute of *Quia emptores*, &c. For a Man could not give Lands after the Statute of *Quia emptores*, &c. unto an Abbot or Prior to hold in *Frankalmoigne*, because he ought to hold of the Lord Paramount, of whom the Tenant held before. But the King at this Day may give Lands in *Frankalmoigne* to an Abbot or Prior, for that he is not bound by the Statute. And also the King may license his Tenant to give Lands unto an Abbot or Prior in *Frankalmoigne* in Fee-simple, to hold in *Frankalmoigne*; for he may dispence with the Statute, and grant such Authority to his Tenant if he will. But it seemeth another Lord cannot grant such License to his Tenant, by Reason of the Interests of the Lord Paramount: But the King and all the mesne Lords together may grant Licenses unto the Tenants Paravail, who have the Fee of the Lands, that they may alien the same to an Abbot or Prior to hold of him in *Frankalmoigne*, or to grant the same unto a lay Person, to hold of him by certain Services, because that the Statute of *Quia emptores*, &c. was made only for the Advantage of the Lords, and therefore they all may dispence with the Statute, which see *t. contra formam collationis*, *Lib. d' Ent.* 119. And there it appeareth, that the Heir shall have the Action against the Successor of the Abbot, who aliened in the Time of his Ancestor.

### Writ of Formedon in the Descender.

[212.] THE Writ of Formedon in the Descender is grounded upon the L (a) Statute of *Westm. 2. cap. 41.* and lieth where a Man giveth Lands to one, and the Heirs of his Body begotten: Or unto a Man and a Woman, and to the Heirs of their Bodies begotten; or unto a Man and a Woman who is his Cousin in Frank-marriage, by (b) Force of which Gift they are seised, and afterwards he alieneth those Lands, or is disseised of them, and dieth; his Heir shall have that Writ of Formedon in the Descender to recover those Lands given in Tail.

And

(a) A Formedon lies for a younger Son inheritable by the Custom, and he shall have a general Writ, but a special Count. 13 H. 4. *Garranty* 94.

(b) A special Writ was on the Reservation of an Estate-tail, by a Fine which is recited in the Writ. 14 H. 4. 31. 1 H. 5. 10. and see there that he need not shew the Fine. 2 H. 5. 4. See a special Form of a Writ on a Feoffment to the Uses of the Feoffor and the Heirs of his Body, and it recites the Feoffment to Uses; and also the Statute of 25 H. 8. in the Writ (which had been better in the Count) *Fijs* versus *Brocket*. Dyer 181.

*Note*; If A. recovers Land against B. by Formedon in Descender of the Gift of C.

where there is no such Gift, and dies: If the Issue brings a Formedon against a Stranger, and the Gift is traversed, it shall not maintain the Recovery, because he who recovers by Supposal comes in paramount the Tenant: But it is otherwise on a Recovery in Value by Warranty; for there he against whom the Recovery is, is as Donor. *Kelw.* 123.

*Note*; On a Feoffment to the Use of one in Tail, the Writ shall be general, and the Count special. *Rast.* 339. and on a Demise, or a Recovery in Value, both the Writ and the Count shall be general; but there must be a special Replication. 15 E. 3. *Brief* 324.



And so upon every Gift in Tail of Lands or Tenements, if the Ancestor doth alien the Lands or Tenements, or be disseised or deforced thereof, and dieth, he who is Heir unto the Lands by Force of the Gift, shall have that Writ of Formedon in the Descender, against him who is Tenant of the Lands or Tenements, or Pernor of the Profits of the same Lands or Tenements. But that Writ against the Pernors of the Profits is given by the Statute of *Anno 1 H. 7. cap. 1.*

A And in special Case, a Man may have a Formedon in the Descender of the Profit apprender in any Lands or Tenements, or issuing out of any Lands or Tenements: As if a Man grant 20 s. or 20 l. issuing out of any Land or Tenement, unto a Man, and the Heirs of his Body begotten; or unto a Man in Frank-marriage with his Daughter. Now if the Donee alien that Rent, or is disseised of the Rent, and dieth, his Heir, who is his Son or Daughter, shall have the Writ of Formedon in the Descender of that Rent.

1 Inst. 21. b.  
22 R. 2. Dif-  
contin. 50.

B (a) And so if a Man grants the Moiety of the Profits arising out of his Mill unto another Man, and the Heirs of his Body, and the Donee dieth, and his Heir is deforced of the Profits, the Heir shall have a Formedon in the Descender for those Profits; and the Form of the Writ is such:

*Rex Vic', &c. Præcipe W. Magistro Hospitalis S. T. Martyris de S. quod, &c. reddat I. C. medietatem exituum provenientium de duobus molend' ipsius Magistri in M. quam B. quondam Magister Hospitalis, &c. dedit W. de C. & hæredibus de corpore suo exeunt', & quæ post mortem, &c.*

And so it seemeth, that (b) if a Man granteth to one and the Heirs of his Body, Pasture for twenty Oxen, or for an hundred Sheep, &c. and the Donee die, and his Son, who is his Heir, is deforced thereof; then he shall have a Formedon in the Descender; and the Writ shall be,

*Rex Vic', &c. Præcipe, &c. quod reddat A. B. pastur' ad viginti boves, vel ad centum oves in centum acris terræ in M. quam, &c.*

But if a Man granteth Common of Pasture to one and the Heir of his Body begotten, which hath Cattle, and the Donee dieth, and the Heir is deforced of the Common, the Heir shall not have a (c) Formedon in the Descender of the Common, but a *Quod permittat*, in the Nature of a Formedon, and shall count upon the Gift and the especial Matter. But the Writ of Formedon is an Action auncestrel. For if he who is seised by Force of the Tail be disseised of the Land, he shall have an

Ant. 124.  
42 E. 3. 20.  
44 E. 3. 40.  
contr'. but it  
is otherwise  
in a Forme-  
don,

C Affise of *Novel Disseisin*, or an Action of Trespass at his Pleasure, and not a Formedon. And what Manner of Gift shall be said a Gift in Tail, and what not, appeareth by Mr. *Littleton* in his Chapter of Estate-tail;

and

(a) See 16 E. 3. *Formedon* 29. and it shall bind the Esplees in taking the Corn, &c. and see there supposed that the Corn Mill be turned into a Fulling Mill, and he demands the Profits; yet if Livery had been, he might have demanded the Moiety of the two Mills. 45 E. 3. *Feoffments* 90. *Dower* 50. See such a Formedon awarded good, 18 E. 3. 56.

(b) See a good Diversity herein. 27 H. 8. 12. per *Shelly*. 4 E. 2. *Brief* 793, 794.

(c) See a Formedon in Descender of a Serjeantry of the Cathedral of *Lincoln*, brought against the Bishop there, and one *J. S.* and adjudged good, without being forced to a *Quod permittat*. 18 E. 3. 27.

and therefore it is not necessary to express the same here. But the D  
Forms of the Writs of Formedon are many, as appeareth by the Regi-  
ster; thus:

Vi. 2. Eliz. *Rex Vic', &c. Præcipe A. quod, &c. reddat B. manerium de N. cum per-*  
Dyer 216. *tin' quod C. dedit D. & E. uxori ejus, & hæred' de corporibus ipsorum D.*  
*& E. (a) exeuntibus, & quod post mortem prædict' D. & E. præfat' B. filio*  
*& hæredi prædict' D. & E. descendere debet per formam donationis prædict',*  
*ut dicit, & nisi, &c.*

22 H. 6. 36. (b) And if the Gift be made in Frank-marriage, then the Form of E  
the Writ is such: *Quod C. dedit B. in liber' maritag' cum fil' ejusdem C.*  
*& quod post mort' præd' D. & E. præf. B. fil' & hæred' præd' D. & E. de-*  
*scend' debet, &c.*

49 E. 3. 21. (c) And in this Writ of Formedon he ought for to make Mention of F  
48 E. 3. 7. every Man who was seised by Force of the Tail, and to name him Son  
11 H. 4. 72. and Heir in his Writ, in this Manner: *Et quod post mortem præd' D. & E.*  
46 E. 3. 9. *& F. filii & hæredis eorundem D. & E. præf. B. filio & hæredi ejusdem F.*  
2 H. 4. 19. *descendere debet, &c.*

49 E. 3. 21. But if any of the Heirs in Tail were not seised by Force of the Tail, G  
11 H. 4. 72. but over-live their Father, and die before that they enter into the Land,  
11 H. 7. 3. or have any Seisin thereof; then they need not for to name them Heirs  
8 E. 3. 11. in the Writ, but only in this Manner:

46 E. 3. 9. *Et quod post mortem prædict' D. & E. filii ejusdem D. & F. filii prædict'*  
27 E. 3. 81. *E. præfat' B. filio præd' F. (d) & consanguineo & hæredi præd' D. descen-*  
*dere debet, &c.*

11 H. 6. 20. And so he ought always to make the Demandant Cousin and Heir, H  
8 E. 2. 11. or Son and Heir to him (e) who was last seised of the Tail, as the  
22 H. 6. 36. Case is; and the surest Way for the Demandant is, to make every Man  
5 E. 3. pl. 67. who

(a) *Quod dedit B. & C. uxori ejus & hære-*  
*ditibus quos idem B. de Corp' ipsius C. procrearet,*  
*& que post mortem præd' B. & C. & D. filii*  
*hæredis eorum B. & C. de corpore ipsius C. per*  
*ipsum B. procreat', &c.* And held good on  
such a special Gift, or otherwise he might  
have had this special Writ here. 3 E. 3. 32.  
12 H. 4. 1. adjudged. And note; If the  
Writ be *ad præfat' B.* it shall abate. 15 E.  
2. Brief 818.

(b) It seems that the Issue after the  
fourth Degree, may have a Formedon,  
supposing the Gift to be general; or he  
may suppose it made in Frank-marriage.  
12 H. 4. 9.

(c) A. the Great Grandfather was seised,  
but not B. the Grandfather; but D. the  
Father was afterwards seised, and E. the  
Son brings a Formedon, and made each  
one Heir to the other, and held good: Or  
he may say, *Eo quod post mortem A. & B.*  
*filii dicti A. & C. filii dicti B. consanguinei &*  
*hæredis dicti A. præfato D. filio & hæredi dicti*  
*C. descendere debet, &c.*

(d) So note; In this Writ he shews *Cofi-*  
*nage*, or Consanguinity; but in a *Sci. fa.*  
it is sufficient if he shews it *de hors*, 8 H. 4.  
21. *Et quod post mortem B. & A. filii & hæ-*  
*redis prædict' B. & C. filii & hæredis ejusdem*  
*B. & D. consanguinei & hæredis prædict' C.*  
*&c.* and it was abated by Award; *contr.* if  
he had shewn how Cousin in his Count.  
12 H. 4. 1. 49 E. 3. 21. 38 E. 3. 24. See  
5 E. 2. Formedon 51. *contr.* 11 H. 6. 43. 31  
E. 3. Brief 338. it is necessary that he  
convey himself Heir to the Donee in the  
Writ, and not in the Count only. 11 H. 6.  
21. A Gift was to the Grandfather, and  
to the Heirs of the Body of the Great  
Grandfather; he ought to make the De-  
mandant Cousin and Heir to the Great  
Grandfather, or else each one Son and  
Heir to the other. Dyer 247.

(e) See 39 E. 3. 10. accordant, Note;  
In a Formedon the Demandant ought to  
make himself Heir to the Donee; and for  
this see 11 H. 6. 41. *Et que post mortem A.*  
*& B. filii & hæredis dicti A. & C. filii B.*  
*præfato*



who is named in the Writ, Son and Heir in the Writ, although they were not seised of the Lands by Force of the Tail; for it is not material whether they were seised or not, although he name them Heir in the Writ; *quod vi. Anno 8 and 11 H. 6.*

I And if Tenant in Tail hath issue two Sons, and dieth, and a Stranger abateth, and entreth into the Land; and afterwards (a) the eldest Son dieth before he entreth into the Land, the youngest Son shall have a Writ of Formedon in the Descender, and needeth not name his eldest Brother Heir to his Father in the Writ, but only Son, because he never had Seisin of the Land, but only held the Estate; but if the eldest Brother had entred, and was seised by Force thereof, and died without Heir of his Body; then the youngest Son who is his Brother and Heir, ought to mention the eldest in the Writ, and him Son and Heir to his Father, and to make himself Brother and Heir unto him.

[213.]

A And if the Heir in Tail be seised by Force of the Tail or not, and after enter into Religion, and be possessed, then his (b) Heir shall have a Writ of Formedon in the Descender in such Form:

N. Br. 141,  
144.  
Ant. 196.

*Et quod post mortem præd' D. & postquam E. filius & hæres præd' D. habitum religionis assumpsit, in quo habitu professus fuit, ut dicit, præfat' B. filio & hæredi ejusdem E. descendere debet, &c.*

But if the Father maketh a Feoffment in Fee, or leaseth the Land for Life, and entreth into Religion, and is professed: Yet his Heir shall

R r r

not

*præfato* (the Demandant) *Filio & hæredi dicti C.* and it was abated by Award. (1.) Because he did not make himself Heir to him, who was last seised. (2.) Because when B. is supposed the only Son and Heir, you shall not make the Writ repugnant. (3.) Because the Writ does not make him Heir to the Donor; for it may be that C. was a younger Son; and therefore by *Martyn, A.* the Grandfather Donee is seised, B. the Father being Son and Heir of A. and C. the Son of B. *præfato* the Demandant, *filio & hæredi C.* is not good, although he makes himself Heir to him who was last seised.

(a) And see accordingly adjudged, that he need not name him Heir, or make the younger Son, who is the Demandant, Heir to him; but there ought to be Mention of him in the Writ and Count, because he survived his Father. 4 E. 2. *Formedon* 48. Yet it seems it is in the Election of the the Demandant, to mention his Brother that survived, but held not the Estate, and held, that the one Writ or the other is good enough. 11 E. 2. *Formedon* 56. 11 H. 4. 7. 28 E. 3. 11. per *Herl.* 7 H. 6. 16. accordant, but in a Writ of Right it is necessary that he be mentioned. 18 E. 2. *Formedon* 59. *con. in Mortdauncester*, and this

is a good Writ, &c. in Right and Possession.

See 10 E. 2. *Discentis* 16. that the younger Son need not mention the Issue in this Case. So 35 E. 3. *Garranty* 75. 4 E. 2. *Formedon* 40. *con.* 11 E. 2. *pl.* 56. 12 E. 2. *Entry* 8. 35 E. 3. *Garranty* 73. that he who seised, shall be said to hold the Estate, and no other. So 46 E. 3. 39. 42 E. 3. 20. and 37 H. 6. *Brief* 132. But 31 E. 1. *Discent* 315. *con.* 11 E. 2. *Formedon* 56. See *Bro. Omission*, &c. 10. That if the elder Brother dies in the Father's Life-time, the younger Son shall not mention him in a Formedon in Descender, or Reverter. 18 E. 2. *Formedon* 59. 11 H. 4. 72. *Nat. Br.* 250. So if the Father does not survive the Grandfather, the Son need not mention the Father in his Writ. 5 E. 2. *Formedon* 51. 8 E. 2. *pl.* 54.

*Note*; In a *Scire fac.* to execute a Formedon in Remainder, the Plaintiff was driven to make Mention of all those on whom the Land descended in Tail, though they were never seised. 25 E. 3. 44. See 10 E. 2. *F. Discentis*.

(b) See according to this Diversity. *Kelw.* 104. yet such Issue shall have Voucher and Age, living his Father, but shall hold the Lands, &c. charged with the Rent granted by his Father. *Ibid.*

not have a Formedon in the Descender, *quia habitum religionis assumpsit*, &c. during the Father's Life, because the Father may lawfully give his Lands during his Life; and after the Death of the Father, he may bring his common Writ of Formedon, if he will, or that special Writ, *quia habitum religionis assump'*, at his Election, as it seemeth.

And if Tenant in Tail goeth upon Pilgrimage, and dieth in his Journey, his Heir shall have a Formedon against a Stranger who entreth and abateth; and the Form of the Writ shall be,

*Et quod post mortem prædict' D. & postquam E. fil' & hæ'r' prædict' D. iter peregrinationis arripuit versus S. Jacobum, in quo itinere obiit, ut dicit, præf. B. fil' & hæ'r', &c.*

And if Tenant in Tail hath Issue two Daughters, and one of them hath Issue a Son and dieth, and afterwards the Tenant in Tail dieth, and a Stranger abateth; now the Daughter and the Son of the other Daughter shall have a Formedon in this Form:

*Quod reddat B. & C. unum messuagium quod D. &c. & quod post mortem prædict' E. & F. unius filiarum ejusdem E. præf. B. alteri filiarum prædict' E. & B. filio prædict' E. & consanguin' & hæred' prædict' E. descendere debet, &c.*

And if Tenant in Tail hath Issue two Sons, and dieth, and the eldest Son entreth, and hath Issue and dieth, and his Issue entreth and dieth without Issue of his Body, then the youngest Son, the Tenant in Tail, shall have such Writ of Formedon, if he be deforced of the Land.

*Et quod post mortem præd' D. & E. fil' & hæ'r' ejusdem D. & F. fil' & hæ'r' ejusdem E. præfat' B. fil' præd' D. & consanguineo & hæredi præd' F descendere debet (a).*

And if a Man give Lands in Tail unto a Woman and the Heirs Males of her Body, and of R. her late Husband begotten; if the Woman die, and a Stranger doth abate, her Heir Male begotten by R. her Husband, shall have a Formedon in this Manner:

*Quod C. dedit D. quæ fuit uxor R. & hæredibus masculis de corpore ipsius D. & præfat' R. quondam viri sui exeuntibus, & quod post mortem præd' D. præf. W. fil' & hæred' ejusdem D. de corpore suo & corpore præd' R. procreat descendere debet, &c.*

And if a Man give Lands to R. and unto the Heirs which the said R. shall beget on his first Wife, then the Form of the Writ of Formedon is such:

*Quod W. dedit R. & hæred' quos idem R. de prima uxore sua procrearet; & quod post mortem præd' R. & A. fil' G. quam primo duxit in uxorem præf. I. filio & hæredi ejusdem R. de præf. A. prima uxore sua procreato descendere debet, &c.*

And if a Man give Lands unto a Woman, and unto the Heirs which he himself shall beget on the Body of the said Woman, and after they have Issue between them two Daughters, and one of them hath Issue a Daughter and dieth, and after the Donor and Donee dieth, the Aunt  
and

(a) Without saying *Masculo*, for it appears by the Writ, 11 H. 6. 45.



and the Niece shall join in a Formedon for that Land, if they be deforced thereof; and the Writ shall be such:

*Quod R. dedit M. & hæred' quos idem R. de corpor' ipsius M. procrearet, & quod post mortem præd' M. & A. unius filiarum (a) ejusd' M. de corpore suo per præf. R. procreat', & I. alteri filiar' ejusd' M. de corpore suo per præf. R. procreat', & I. de S. filio præd' A. & consanguineo & hæred' ejusd' M. descendere debet, &c.*

H And if Lands be given to a Man and his Wife, and to the Heirs of their two Bodies, and they have Issue a Son, and die, and the Son is seised, and hath Issue three Daughters, which hath Issue, and die in the Life of their Father, and after one of the Daughters hath Issue and claimeth in the Life of the Grandfather, and afterwards the Father and three Daughters die, the Coparceners of the three Daughters shall have a Formedon in such Form:

*Et quod post mortem præd' E. & F. & W. fil' & hæred' earund' E. & F. & A. M. & K. filiarum præd' W. & Saræ fil' præd' M. præfat' A. filia præd' A. & Johan' fil' præd' K. & W. alter' filio præd' S. consanguineis & hæred' præd' Wilhelmi descendere debet, &c.*

I And if Lands be given to R. and I. and to the Heirs of the Body of R. begotten, and R. hath Issue four Daughters, and he and one of his Daughters enter into Religion, and are professed, and I. dieth; and afterwards one of the Daughters of R. dieth before they have any Possession of the Lands, and the other two Daughters do survive, and are deforced of the Land, they shall have a Formedon in such Form:

*Quod T. dedit R. & I. & hæred' de corpore ipsius R. exeunt', & quod (b) post mortem præd' I. & postquam præd' R. & Gracia una filiarum præd' R. habitum religionis assumpser', & in quo habitu professi sunt, ut dicitur; Ac etiam post mortem E. alterius filiarum præd' R. præfat' M. & A. aliis duabus filiabus ejusdem R. post mortem E. alterius filiarum præd' R. præf. M. & A. descendere debet, &c.*

K And if the Reversion of Tenant in Dower be granted to a Man in Tail, and after the Death of Tenant in Dower he is seised of the Land by Force of the Gift, and hath Issue and dieth, and the Issue entreth and hath a Daughter and dieth, and afterwards a Stranger entreth and abateth in the Land, the Heir of the Issue in Tail shall have a Formedon in this Form:

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*Quod I. de H. tenet in dotem de hæred' I. de S. & quod idem I. concessit W. de S. & hæred' de corpore suo exeuntibus post mortem præd' I. habend', & quod post mortem præd' I. & W. & R. filii & hæred' ejusd' W. præfat' Isabellæ filia & hæred' præd' W. descendere debet.*

A And if a Man lease Lands for Life, and afterwards grants the Reversion in Tail, and then Tenant for Life dieth: Now if a Stranger abate in the Land, the Grantee in the Reversion shall have such Writ:

R r r 2

*Quod*

(a) Without saying (*Et R.*) because he had nothing in the Tail: But if on the shewing, it happens to appear, that R. was Tenant by the Curtesy, thereon shew-

ing the Writ *Post mortem R. & M.* shall be well enough. 20 E. 3. Brief 377.

(b) Note; The Death of R. ought to be shewn, or else the Writ shall abate, *Commendablement.* 11 H. 6. 28.

*Quod I. dedit P. ad vitam suam, & quod eadem I. postmodum concessit præfat' F. & hæred' de corpore suo exeunt' post mortem ipsius P. habend', & quod post mortem prædict' P. præf. F. remanere debet per formam donationis & concess. præd' (a).*

And if a Man lease Lands for Term of Life, and afterwards grants the Reversion in Tail, by Fine unto a Man and his Wife, and unto the Heirs which he shall beget on the Body of his Wife, and afterwards the Tenant for Life dieth, and the Husband and Wife enter and are seised by Force of the Tail, and die, and a Stranger abateth and entreth into the Land; the Heir shall have a Formedon thus:

*Quod A. dedit B. ad vitam ipsius B. & quod idem A. per finem inde in Curia Domini E. quondam Regis Angliæ avi nostri, coram C. & sociis suis tunc Justic', &c. per breve suum levat', concessit D. & E. uxori ejus, habend' post mortem ejusdem B. eisdem D. & E. & hæred' quos idem D. de corpore ipsius E. procrearet, & quod post mortem prædict' B. D. & E. præfat' F. filio & hæred' (b) prædict' D. & E. de corpore ipsius E. per præf. D. procreato descendere debet per formam donationis, & finis prædict', ut dicit, &c. (c)*

### *Another Writ of Formedon in the Descender.*

**T**H E R E is another Writ of Formedon in the Descender, which is B called a Writ of Formedon of Land, which he holdeth in Coparcenary, and that Writ lieth properly, where Tenant in Tail dieth seised, and hath Issue many Daughters, and they enter, and make a Division and

(a) It seems he may have a general Writ in this Case. 11 H. 6. 21.

(b) See the like Writ awarded good. 11 E. 3. Brief 474. 41 E. 3. Brief 549.

(c) *In what Manner Esplees shall be alledged in a Formedon.*

In a Formedon in Remainder, it is sufficient to alledge the Esplees in him who was seised by the Gift, without alledging them in the Donor; *quod vide* 9 H. 6. 53. 11 E. 3. Formedon 31. yet the Count is not the worse, if they are alledged in the Donor. 8 E. 3. 59. *Rast. Entr.* 369. 27 E. 3. 84. and the Reason in this Case, and in Formedon in Descender, is, for that the Count shews a Seisin in the Donor. 15 E. 4. 17. In a Formedon in Descender, if A. gives to B. for Life, Remainder to C. in Tail; B. dies, and C. enters and dies, and the Issue brings Formedon in Descender; and held, (1.) In no Case in Formedon in Descender, is it necessary to alledge Es-

plees in the Donor; but where it is so, he is not prejudiced. 8 E. 3. 19. 10 E. 3. 5.

(2.) He may have in this Case a general Writ, supposing the Gift to be immediately to C. and then it is sufficient to alledge Esplees in C. without Doubt. 9 H. 6. 53. 44 E. 3. 18. (3.) He may count on the special Matter, and then ought to alledge Esplees in B. and also in the Donee. 11 E. 3. Formedon 32. 8 E. 3. 19. *Rast. Entr.* 363. yet see a Formedon in Descender, where a Reversion was granted in Tail, bound the Esplees in such special Writ in the Donor. 5 E. 3. 17. 4 E. 3. 45. and also in the Lessee for Life, and in the Grantee in Tail. (4.) A Formedon in Reverter, ought to alledge Esplees in the Donor. 9 H. 6. 53. and also in the Donee.

*Note;* In a *Sive facias* to execute a Remainder, the Plaintiff was driven to make Mention of all those on whom the Land descended in Tail, although they were not seised. 25 E. 3. 44. See 10 E. 2. *Discentis*.



and Partition of the Land betwixt them, and one of the Coparceners after the Partition doth alien her Part and dieth; her Heir shall have that Manner of Writ of Formedon, and that Writ lieth for Lands given in Frank-marriage, as well as for other Lands given in Tail.

And if Lands in (a) Gavelkind be entailed and descend to many Brethren, as Heirs to their Father, and they make Partition betwixt them of the Lands, and afterwards one alieneth his Part and dieth, his Heir shall have a Formedon of that which they held in Parts; and the Form of the Writ is such:

*Rex, &c. Præcipe A. quod, &c. reddat B. quatuor viginti acr' terr' cum pertin' in D. quas (b) una cum aliis quatuor viginti acr' terr' cum pertin' in eadem vill' L. dedit T. in liber' maritag' cum I. filia prædicti L. & quas post mortem prædicti T. I. & M. fil' & unius hæred' eorundem T. & I. quæ illas tenuit in purpartem suam, ipsam de prædicti cent' & sexaginta acris terræ per partition' inter ipsam M. & R. sororem ejusdem M. filiam & alter' hæred' prædicti T. & I. inde fact' contingent' præfat' filio & hæred' prædicti M. descendere debet, &c.*

C And if two Coparceners be Tenants in Tail by Descent from their Father or Mother, and afterwards they make Partition, and one Coparcener hath Issue and dieth, and the other Coparcener dieth without Issue, the Heir of that Coparcener who hath Issue shall have a Formedon in this Form:

*Et quod post mortem prædicti T. & I. & K. filia & unius hæred' eorundem T. & I. quæ illas tenuit in purpartem suam, ipsam de prædicti centum & sexaginta acr' terr' per partic' inter ipsam K. & M. soror' ejusdem K. fil' & alteram hæred' prædicti T. & I. inde fact' contingent', & præf. M. præf. G. filio prædicti M. & consanguineo & hæred' prædicti K. descendere debet, &c.*

And it appeareth by the Register, that a Man shall have a Writ of Formedon of Land which he held in Partition by the Name of the Moiety in special Cases; as where two Coparceners are Daughters of Tenant in Tail, and they make Partition betwixt them of the Land, and afterwards one Sister dieth without Issue, and the other Sister alieneth the Land, and hath Issue and dieth; the Issue of the Coparcener who had Issue, shall have a Formedon of all the Land in Tail in this Form:

*Rex Vic', &c. Præcipe F. quod reddat H. 10. Mesuag', 20. acr' terr' cum pertinentiis, &c. quæ I. dedit A. & hæred' de corpore suo exeuntibus, & quæ post mortem prædicti A. & M. fil' & unius hæred' ejusd' A. quæ medietat' præd' mesuag' & terr' tenuit in purpartem suam, & B. fil' & alterius hæred' præd' A. quæ alteram medietatem eorundem Mesuagior' & terr' tenuit in purpartem suam, per partition' inde inter ipsas factam, quæ quidem B. dict' medietatem præf. M. contingent' post mortem ejusdem M. ut soror & hæres ejusdem M. tenuit, præf. H. filio & hæredi præd' B. descendere debent.*

And

(a) He ought to shew in his Count, that the Tenements are partible, but not in the Writ. 11 H. 6. 44.

(b) Note; The Form of the Writ, when

all the Lands in Fee-simple are allotted to the elder Son; and all the entailed Lands to the younger, who aliens and dies, without saying *una cum*, &c. 20 H. 6. 13.

And the Writ is good, because by the Death of one Sister without Issue, the Partition is made void, and the other shall have the whole Land as Heir in Tail.

And if a Man give Lands in Tail unto *I.* his Daughter, and to the D Heirs of her Body, and *I.* hath Issue two Daughters and dieth, and they enter and make Partition between them, and afterwards one of the Daughters hath Issue two Daughters, and one of the two Daughters hath Issue four Daughters, and die, and afterwards the Aunt who was one of the Daughters of the Donee dieth without Issue, &c. and a Stranger abateth; the four Daughters, and the Issue of the other Sister shall have a Formedon in such Form:

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*Quod reddat tria Mesuagia, centum acr' terræ, & viginti acr' prati, & cent' solid' redditus, cum pertin' in N. quæ una cum Manerio de B. cum pertinentiis, A. dedit I. filio suo & hæredibus de corpore ipsius I. exeunt', & quæ post mortem prædict' I. & C. fil' & unius hæred' ejusdem I. quæ illam tenuit in purpartem suam, ipsam post mortem prædict' I. de prædict' Maner', Mesuag', terra, prato, & redditu per partition' inter ipsam C. D. filiam & alteram hæredem ejusdem I. inde fact' contingent', & præd' D. & A. & E. prædict' D. præf. Margaret, Margery, Katherine & Constantine, filiiabus præd' A. & T. filii præd' E. & consanguin' & hæred' præd' C. descendere debent, &c.*

And if the Moiety of any Land be given to the Husband and Wife, A and unto the Heirs of their two Bodies begotten, and they have Issue four Daughters and die, and the Sisters enter and make Partition betwixt them, and afterwards the two Sisters die without Issue, and the third Sister alieneth, and dieth without Issue; the four Sisters shall have a Formedon in this Form:

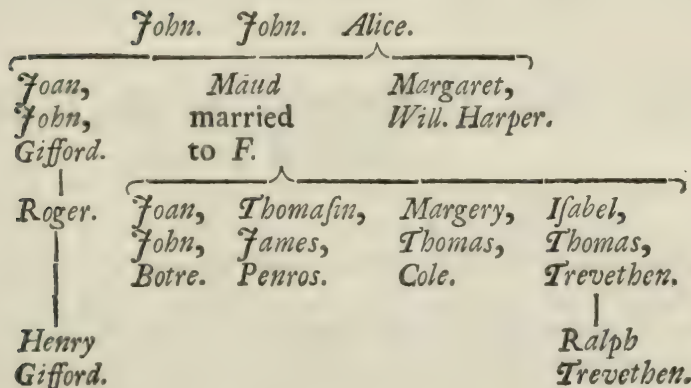
*Et quæ post mortem prædictor' Rogeri & Agnetis, & Alic' fil' junioris, B & unius hæredum eorundem Rogeri & Agnet', quæ eadem Alicia jun' dictam quartam partem tenuit in purpartem suam, ipsam de prædict' medietat' per partitionem inter ipsam & Isabel' & Aliciam seniore, & præf. Matildam filias & tres alteras hæred' prædict' Rogeri & Agnetis uxoris ejus inde factam contingent', & prædict' Isabellæ fil' Rogeri & Aliciæ senioris præf. Matildæ sorori & hæredi ejusdem Aliciæ junior' descendere debent, &c.*

And to make a full Declaration of the Case of Formedon in the Descender, upon which the Writ is founded, it is necessary to have the Pedigree made in the Writ, which you shall see here following:



Henry Russel.  
Elizabeth his Wife.

Henry Russel.



Henry Russel gave Land to Henry Russel and to Elizabeth his Wife, to Henry their Son, and to the Heirs of the said Henry the Son of his Body lawfully begotten, and died, and after Henry Russel the Father and Mother died, and Henry Russel the Son was seised by Force of the Tail, and had Issue Joan, John and Alice, and Alice had Issue Joan, Maud and Margaret, and Joan was married to John Gifford, and had Issue Roger Gifford, who had Issue Henry Gifford, and Maud was married to F. and had Issue Joan, married to John Botreux, Thomassin married to James Penros, Margaret married to Thomas Cole, and Isabel married to Treve-then; and Isabel had Issue Ralph Trevethen, and Margaret was married to William Harper; and Henry Russel the Son died, and John his Brother entred and was seised by Force of the Tail and died, and a Stranger abated, and all the Heirs in Tail are dead, but Margaret Harper the Wife of William Harper, Henry Gifford, Thomassin married to James Penros, Joan Botreux married to John Botreux, and Margery Cole married to Thomas Cole, Joan, Margaret and Ralph, Son of the said Isabel; now these Coparceners shall join in the Formedon, and the Writ shall be such:

Rex Vic', &c. Præcipe Reginaldo Rees quod, &c. reddat Will. Harper & Margaret. uxori ejus, Henrico Gifford, Jacobo Penros & Thom. uxor' ejus, Johanni Botreux & Johann. uxor' ejus, Thom. Cole & Marger. uxori ejus, & Radulpho Trevethen, manerium de R. cum pertinen' quod Henr. Russel dedit Henrico de Russel & E. uxori ejus, & Henrico filio eorundem Henr. de Russel, & hæred' de corpore ipsius Henr. filii Henr. exeunt', & quod post mortem prædict' Henr. de Russel, & E. & Henr. filii Henr. & Johan. filii & hæred' ejusdem Henr. filii Henr. & Johan. fratris & hæred' ejusdem Johan. filii Henr. & Alic. sororis ejusdem Johan. fratris Johannis & Johannæ unius, & Matildæ alterius fil' ejusdem Aliciæ & Rogeri

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Rogeri filii prædicti Johanne filii Alicie, & Johanne unius filiarum prædicti Matild. præfat. Margaret. uxor. Wilhelmi tertie filiarum prædicti Alicie, Henrico Gifford filii prædicti Rogeri & Thomafine, Johan. uxori Johan. Margerie uxori Thom. cæteris filiabus prædicti Matild. & Radulpho filio prædicti Isabellæ filii Matild. & consanguineo & hæred. prædicti Johannis fratris Johannis descendere debet, &c.

### Another Writ of Formedon in the Descender, called Insimul tenuit.

**T**HERE is another Manner of Writ of Formedon in the Descender, which is called *Formedon qui insimul tenuit*; and that Writ lieth by one Coparcener, or by one Heir in Gavelkind of Lands entailed, where they hold the Lands entailed in Coparcenary without any Partition made between them of the same, and afterwards one Coparcener doth alien her Part unto a Stranger in Fee, and dieth without Issue, or hath Issue and dieth; or if she dieth seised, and hath Issue, and a Stranger doth oust the Issue, or the other Coparcener doth put out the Issue, the Issue, or he who is Heir to the Tail of those Lands, shall have that Writ of Formedon against the Stranger, or the other Coparcener, who deforced her of the Land.

*Rex Vic. &c. Præcipe Abbati Westmon. &c. quod reddat B. & I. uxori ejus duas partes triginta solidat. redditus, mille alborum panum pretii 20. solid. & quinque lagenarum cervis. pretii decem denariorum cum pertinen. in B. quæ una cum tertia parte (a) earundem solidat. redditus, panis & cervis. cum pertinen. in eadem villa, A. dedit G. & B. uxori ejus, & hæred. de corporibus ipsorum G. & B. exeuntibus, & quæ post mortem prædicti G. & B. & R. filii & hæred. eorundem G. & B. & T. filie & hæred. ejusdem R. & W. filii & hæredis ejusdem T. & M. filii & unius hæred. ejusdem W. qui illas duas partes, & dicit partem cum K. filia & altera hæredum prædicti W. insimul tenuit, & D. fil. & hæred. ejusdem M. & prædicti K. amit. prædicti C. & F. fil. ejusdem K. præfat. I. fil. prædicti F. & consanguineæ & hæred. prædicti D. descendere debent per formam donat. prædicti, &c.*

And by that Writ it seems, that *I.* is seised of the third Part of those *B* Rents; and bringeth this Writ of two Parts of that Rent.

And there is another Writ of Formedon and *Insimul tenuit*, where he shall make his Demand by the Name of the Moiety, and that is where one Coparcener is deforced of her Part, and the other Coparcener is in Possession of her Part, and the Writ is such:

*Præcipe*

(a) Note; These Words are necessary. 5 H. 5. 8.



*Præcipe Abbati Westmon' quod, &c. redd' B. & I. uxori ejus medietat' triginta solidat' redditus, & reddit' mille albor' panum, pretii decem solid' & quinque lagenarum cervisæ, pretii decem denariorum, &c. cum pertin' in villa Westm', quam una cum alia medietate eorundem triginta solidat' redditus, & redditus panis & cervisæ cum pertin' in eadem villa, A. dedit G. & B. uxori ejus, & hæred' de corporibus eorundem G. & B. exeuntibus, & quam post mortem præd' G. & B. & F. filii & hæred' eorundem G. & B. & T. fil' & hæredis ejusdem F. & W. filii & hæred' ejusdem T. & R. filii & unius hæred' ejusdem W. quæ illam & præd' aliam medietat' cum M. filia & altera hæred' præd' W. insimul tenuit, & E. filii ejusdem R. præfat' I. fil' prædict' E. & consanguineo & hæred' prædict' R. descendere debet, &c.*

C And it appeareth by that Writ, that one Coparcener hall have the Writ of *Formedon* in the *Insimul tenuit* against a Stranger upon the Possession of his Ancestor, without naming the other Coparcener who hath her Part in Possession.

And if a Man do bring a *Formedon* in the Descender upon the Seisin of his Brother, and as Heir to his Brother ; he shall not mention in the Writ, that his Brother is dead without Issue : But if a Man bring a *Formedon* in the Descender as Cousin and Heir to him, he ought to mention in the Writ how he is Cousin and Heir to him, and he ought to make himself Heir unto him who was last seised, and that by the same Writ.

D And a Man shall have a *Formedon* in the Descender upon a Gift in Tail made after the Statute *de Donis*, if the Alienation be made after the Statute, and not before.

E And if Lands in Tail descend to two Coparceners, and one entreth into the whole, and the other hath Issue and dieth, and she which entreth into the whole dieth without Issue, the Issue of the other Coparcener shall have several (a) Writs of *Formedon*, one of Seisin of the Grandfather, and in that Writ he shall not say *Insimul tenuit*, &c. because her Mother was never seised ; but of the other Moiety of the Land of the Seisin of her Aunt, the Writ shall say, *Qui insimul tenuit* with her

F Mother ; for that Seisin was a Seisin to her Mother, if he would, &c. And if one Coparcener after the Death of the Ancestor enter into the whole, and alieneth in Fee, and dieth without Issue, the other Coparcener shall demand the Moiety as Heir unto her Father, and the other Moiety as Heir unto her Sister.

40 E. 3. 8.  
4 E. 3. 9.  
contr. 43 E  
16, 17. 19  
H. 6. 45.

S f f

And

(a) See accordingly adjudged, 40 E. 3. 8. Where the Case is, Donee in Tail had Issue two Daughters A. and B. A. enters into the Whole, and aliens in Fee, and dies without Issue, B. has Issue C. and dies, C. brings a *Formedon*, *Quæ Post Mort. A. Donee* and B. *filie* of the Donee *descend' debet* to the Demandant (of one Moiety) and for the other Moiety, *Quæ post Mort. of the Donee*, and A. *filia & unius hæredis* of

the Donee for the one Moiety, and for the other to B. the Heir of A. *qui insimul, &c.* Adjudged, 43 E. 3. 16. 17. Yet See *per Cur.* 19 H. 6. 45. if the one Parcener enters into the Whole, and after dies, and the other has Issue and dies, the Issue shall have a *Formedon* against the Tenant in Possession of her Mother, supposing *quod insimul tenuit* with the Aunt, for the Possession of one is the Possession of the other.

[217.]

And if the Heirs in Tail of Gavel-kind bring a *Formedon* in the De-  
scender, the Writ shall be of common Form, as the Writ of *Formedon*  
brought by Sisters, and in the Count he shall shew the Custom.

A *Formedon* shall be brought of Gorfes, but not of an Advowson. B

And if Tenant in Tail be indebted to the King in the Exchequer,  
and dieth; and his Heir entreth into the Lands, and is distrained in  
the entail Lands for the King's Debt: Now if the Father's Executors  
have Affets or Goods, or if the Father hath Lands in Fee-simple in the  
Hands of others, which he hath aliened; the Heir in Tail shall have a  
special Writ unto the Treasurer and Barons of the Exchequer, rehear-  
sing the whole Matter; commanding them that they do enquire there-  
of; and if it be true, that they do surcease to charge him upon the  
entailed Lands; and the Writ is such:

4 El. 240. b.  
accordant,  
but ib. 249.  
per Brown  
held contr.

*Rex Thesaurario & Baron' suis de Scaccario salutem. Monstravit nobis R. filius I. de W. quod licet ipse non tenet terras seu tenement' quæ fuer' prædict' I. prout 12. Messuag' & 2. carucat' terr' in I. cum pertin' quod præd' I. & C. uxor ejus. mat' præd' R. quorum hæres ipse est, tenuer' sibi & hæred' de corporibus ipsorum I. & C. exeuntibus, ex dono & concessione H. de C. per finem inde in Cur' Domini E. &c. avi nostri levatum, & quæ post mortem prædict' I. & C. ad manus ipsius R. virtute finis præd' devener'; vos nihilomin' ipsum R. in terras & tenement' præd' quæ sic tenent' in feod' talliato, pro centum libris nobis pro arrerag' extent' manerii de Offord' præfat' I. per vos postquam gubernacula regni susceperimus, & ten' præd' dictis I. & C. in feod' taliato sic data & concess' fuer' commiss. reddend' omis. tam præd' hæred' prædict' I. quam tenent' terrar' & tenement' quæ fuer' ipsius I. in feodo simplici, qui de debitis suis de jure debent onerari & sufficient' habeant unde debita illa levare possint, distringitis, & ipsum ea occasione inquietatis multipliciter & gravatis minus juste, &c. super quo nobis supplicavit sibi per nos remedium adhiberi: Nos volentes præfat' R. in hac parte injuriari, vobis mandamus, quod si vobis modo legitimo constare poterit mess. & terras præd' prædictis I. & C. in forma præd' data & concess' fuisse, ipsumque R. aliqua alia terras & tenementa quæ fuerunt præd' I. præter eadem mess. & terram, quæ ad manus suas virtute finis devenerunt, non tener', ac dictum hæredem seu tenent' præd' sufficient' habere, unde dicta debita levare possint, sicut præd' est, tunc præd' R. de præd' centum libris erga nos exonerari, & quietum esse faciat, illos qui inde de jure onerari debent, prout justum fuerit, onerantes. Teste, &c.*

4 El. 240.

And by that Writ it appeareth, that if the Heir or the other Ter-  
tenants were not sufficient for to pay the Debt, the Lands which the  
Heir hath in Tail shall be charged; for some say that the King is not  
bound by the Statute of *Donis*, &c. but that he is in the same Case he  
was before; *Quere* thereof (a).

And if a Man do alien his Lands in Fee, and afterwards become in-  
debted to the King, &c. If the Alienee be distrained for that Debt, he  
shall have a special Writ to the Treasurer and Barons of the Exche-  
quer, rehearsing the whole Matter, commanding them for to surcease, &c.  
And

(a) *Note*; Stat. 33 H. 8. c. 39. makes the Heir in Tail liable.



And so if a Man be distrained for a Debt or Duty due to the King, as Executor, or as Pledge for him who is the King's Debtor, he shall have a special Writ unto the Treasurer and Barons of the Exchequer, to enquire thereof, and to do Right (a).

Writ of Formedon in the Remainder.

**D** **T**HE Writ of Formedon in the Remainder lieth, where a Man giveth Lands to one in (b) Tail, the Remainder unto another in Tail, and afterwards the first Tenant in Tail dieth without Issue of his Body, and a Stranger doth abate and deforce him in the Remainder ; he in the Remainder, or his Heir, shall have that Writ of Formedon in Remainder. And so if the first Tenant in Tail alieneth in Fee, and dieth without Issue of his Body begotten, he in the Remainder in Fee shall have a Writ of Formedon in the Remainder to recover his Estate, &c.

**E** And if a Man giveth Lands for Term of Life, the Remainder to another, and the Heirs of his Body begotten, and the Tenant for Life dieth, and a Stranger abateth and deforceth him in the Remainder, that he cannot enter, he in the Remainder, or his Heir, shall have a Formedon in Remainder to recover his Estate, &c.

So if a Man make a Gift in Tail, the Remainder in Fee to another, and the Tenant in Tail alieneth in Fee or in Tail, or for Life, and dieth without Issue, he in the Remainder, or his Heir, shall have a Formedon in the Remainder to recover that Land.

And it seemeth the same Law shall be, if a Man lease Lands for Term of Life, the Remainder to another in Fee, and the Tenant for Life doth alien in Fee, or in Tail, or for Life, and dieth, and a Stranger abateth and deforceth him who ought for to have the Remainder ; then he in the Remainder, or his Heir, shall have a Formedon in the Remainder to recover that Land : *Quod vid. 24 E. 3.*

And that appeareth to be but reasonable, because he hath Right for to have the Land ; and then it is but Reason that he have an Action for to recover the same : And that appeareth by the Statute of *West. 2. cap. 24.* which willeth, *Quod quotiescunque de cætero evenerit in Cancellar' quod in uno casu reperit' breve, in consimili casu cadente sub eodem jure, & simili remedio indigente ; concordent Clerici in Canc' in brevi faciend'.* For which it seemeth that such Writs are granted.

[218.]

S f f 2

And

(a) *Note* ; Regularly where Process is by Summons, Attachment, and *Capias* (Distress,) after *Nihil* returned on the Summons, a *Capias* shall issue. 21 H. 6. 56

*Note* also ; If the original *Formedon* be returned *Tarde*, the Summons *sicut alias* is instead of a new Original, and there shall be 9 Returns between the *Teste* and Return, and it shall be a *Si fecerit to Securum.* *Dyer 252.*

(b) And so it is, if the Issue of the Issue in Tail dies without Issue, for then on the whole Matter, the Tenant in Tail is dead without Issue ; by *Dyer 4 El. 233.*

And also upon the Statute of *Donis conditionalibus*, there is not the A Writ of Formedon given by exprefs Words, but a Writ of Formedon in the Descender; but yet it was never doubted, but that if a Man make a Lease for Life, the Remainder in Tail to another, that he in the Remainder in Tail, or his Heir should have a Writ of Formedon in the Remainder, after the Death of the Tenant for Life, if he were deforced of the Land; and that is by Equity of the Statute of *Donis*, as it seems: For no Formedon in the Remainder is given by any Statute; and therefore it seems it shall be taken by Equity of the Statute; yet some have doubted thereof; and the Form of the Writ for him who claimeth the Remainder in Fee-simple, after the Estate-tail determined, is such:

*Rex Vic', &c. Præcipe A. quod, &c. reddat B. unum messuag' xx. acr' B terr', &c. quæ C. dedit D. & hæred' de corpore suo exeuntibus, ita quod si idem D. sine hæred' de corpore suo exeunt' obierit, præd' messuag' & xx. acr' terr' cum pertinen' præf. B. & hæredibus suis remanerent. Et quod post mort' prædict' D. præfat' B. remanere debent per formam donationis prædict', eo quod prædict' D. obiit sine hærede de corpore suo exeunte, ut dicit, & nisi, &c. tunc sum'.*

And for the Heir of him upon whom the Remainder was entailed: Thus,

(a) *Et quæ post mort' prædict' D. & B. præf. I. filio & hæred' præd' B. remanere debet per form', &c. eo quod præd' D. obiit sine hæred' de corpore suo exeunte, ut dicit, & nisi, &c. (b).*

And if a Lease be made for Term of Life, the Remainder unto C another, and unto the Heirs of his Body begotten; now after the Death of Tenant for Life, if he in the Remainder be deforced of the Land by Abatement of a Stranger, then he shall have such Writ:

*Quod A. debet B. ad vitam ipsius B. ita quod post mortem ejusdem B. prædict' mess'. & xx. acr' terr' cum pertin' D. & hæred' de corpore suo exeuntibus remanerent, & quod post mortem prædict' B. & D. præf. W. filio (c) & hæredi ejusdem D. remanere debent per formam, &c.*

2 & 3 Ma.  
Dyer 125.  
6 E. 3. 5.

And if a Reversion be granted to another in Tail, and the Tenant D for Life dieth seised, and the Stranger abates and enters the Land; the Grantee in Reversion shall have a Formedon in such Form:

*Quæ C. dedit T. ad vitam ipsius T. & quæ idem G. postmodum concessit præfat. P. & M. quondam viro suo habend' post mortem præd' T. præfat' P. & M. & hæred' de corp' ipsor' P. & M. exeuntibus, & quæ post mortem præd' T. præf. M. remanere debent per form' concessionis præd', ut dic', &c.*

And if A. give a Manor except 13 s. 4 d. Rent to R. and I. his Wife, E and to the Heirs of their two Bodies begotten, and the Remainder to

2

one

(a) See 5 E. 3. 25. 6 E. 3. 9. 7 E. 3. 4. The Writ is good without saying *per Mortem B.* for that is supposed by saying *Filius & Heres.* See 11 H. 6. 43.

(b) See 31 E. 3. Brief 328. In Descender in a *Sire facias.*

(c) Note; If he demands as Cousin and

Heir to D. he may say *ut consanguineo & hæredi prædict' D.* or he may say, *remanere debet dicto Filio & Hæredi G. filii & hæredis dicti D. &c.* Adjudged int' Freke and Bin'ord.

Note; The *post Mortem* is sufficient for the Estate for Life, without shewing the Death with the *Eo quod, &c.* Dyer 347.



one *I.* in Fee, and afterwards *R.* aliens one House and one Acre of Land to one Man, and three Acres to another, and two Acres of Land to a third Person, and the Residue of the Manor unto one *B.* in Fee, except the Rent of 13 s. 4 d. and afterwards the Husband and Wife die without Issue betwixt them; he in the Remainder shall have such Writ against the Alienee.

*Præcipe D. quod, &c. reddat I. manerium de F. cum pertin' exceptis uno mess. sex acr' terr' & tresdecim solidat' & quatuor denar' redditus in eodem manerio. Et præcipe G. quod, &c. reddat eidem I. unum messuag' & xx. acr' terr' cum pertin' in F. Et præcipe T. quod, &c. reddat eidem I. tres acr' terr', &c. Et præcipe L. quod, &c. reddat eidem I. duas acr' terr' cum pertin' que A. dedit R. & I. uxori ejus & hæred' de corporibus ipsorum R. & I. exeunt', ita quod si iidem R. & I. sine hæred' de corpor', &c. obierint, (a) prædict' mess. sex acr' terr' & maner' except' mess. sex acr' terr' & redditu præd', præfat' I. & hæredibus suis remanerent, &c.*

And by that it appeareth, that a Man shall have a Writ of Formedon in Remainder against several Tenants by divers *Præcipes* in one Writ.

And if a Man lease Lands for Life, the Remainder in Tail, &c. the Remainder over in Fee to another, and the Tenant for Life dieth, and the Tenant in Tail alieneth in Fee, and afterwards the Alienee doth alien two Parts of the Land to one Tenant, and the third Part of the Land to another Tenant, and then the Tenant for Life dieth, and then the Tenant in Tail dieth without Issue: He in the Remainder in Fee shall have a Formedon in the Remainder, in such Form:

*Præcipe A. quod, &c. redd' B. duas partes unius mess. cum pertin' in N. Præc' F. quod, &c. reddat eidem B. tertiam partem unius mess. cum pertin' in eadem villa, quas D. dedit C. ad vitam ipsius C. ita quod post mortem ipsius C. præd' duæ partes & tertia pars præf. B. & hæred' de corpore suo exeunt' remanerent, & si præd' F. sine hæred' de corpore suo exeunte obierit, præd' duæ partes & tertia pars præf. B. & hæred' suis remanerent, & que post mort' præd' C. & F. præf. B. remanere (b) debent per form' donationis præd' eo quod' præd' F. obiit sine hæred' de corpore suo exeunt', ut dicit, & nisi, &c.*

And by that appeareth how that he shall have one Writ by several *Præcipes* against several Tenants.

**F** If a Man lease to one twenty Acres of Lands for Life, and dieth, and the Reversion descendeth to his Brother, and he dieth, and the Reversion

(a) *Nota bene*; A joint Conclusion to several *Præcipes*, because the Title is in one. 8 R. 2. Brief 929.

(b) But if the Remainder had been in Tail to the Heirs of the Body of *F.* and *C.* had died Living *F.* *A.* need not make Mention thereof. 38 E. 3. 26. And by *Paston*, 3 H. 6. 2. If Land be given to *A.* for Life, Remainder to *B.* in Tail, Remainder to *C.* in Fee, and *B.* dies without Issue living *A.* and afterward *A.* dies, *C.* shall have a Writ, supposing the Remain-

der tailed, or come to him presently on the Death of *A.* if he will. And *Note*; In this Writ no Mention is of the Death of *C.* (who had but an Estate for Life) in the *Eo quod*. *Dyer* 349. A Gift was to *A.* in Tail, the Remainder to *B.* and *C.* in Tail, the Issue of *B.* bring a *Formedon* in Remainder, *Et que post Mort. A. & B. & C. præfato petenti ut filio & hæredi B. remanere Debet, &c. Eo quod prædict' A. obiit sine, &c.* and held good without shewing the Death of *C.* in the *Eo quod*.

[219.] version descendeth to his two Sisters, and they do make Partition of the Lands, and ten Acres are assigned to one Sister to have to her and her Heirs, and the other ten Acres are allotted to the other Sister and her Heirs; and one of the Coparceners grants the Reversion of her Part and ten Acres to a Man and his Wife, and the Heirs of their two Bodies begotten, and afterwards the Tenant for Life dieth, and a Stranger doth enter and abate in the Land; the Husband and the Wife who are in the Remainder, shall have a Writ of Formedon in the Remainder in this Form:

*Præc' R. de N. quod redd' K. & A. uxori ejus decem acr' terr' cum pertinentiis in N. quas una cum aliis decem acr' terr' cum pertinentiis in eadem villa R. de S. dedit W. ad totam vitam suam, & quas M. de B. soror & una hæred' N. de S. fratri & hæred' præd' R. de S. cui quidem M. reversionis præd' decem acr' terr' assignata fuit in purpartem suam, ipsam de prædictis viginti acris terr' per partic' inter ipsam & Luciam soror' & alteram hæred' prædict' N. de S. inde factam post mort' præd' W. contingent', concessit præfat' R. & hæc' de corporibus ipsorum R. & A. exeunt' post mort' ejusd' W. habend', & quæ post mortem ejusdem W. præf. R. & A. remanere debent per formam concessionis prædict', ut dicunt, & nisi fecerint, &c. & prædict', &c.*

And if he who hath the Remainder, or his Heir, be once seised of A the Lands by Force of the Remainder; then he shall never have a Formedon in (a) Remainder for that Land, but a Formedon in Descender, because the Remainder is once executed. And no Tenant shall have a Formedon in Descender, nor in Remainder, where he is once in Possession by Force of the Entail, or by Force of the Remainder; for after that, he hath Possession of the Land by Force of the Tail, or by Force of the Remainder; if he be put out, he shall have an Assise of Novel Disseisin, or the Writ of *Quibus*, in the Nature of an Assise, &c.

(b) If a Remainder be given to two or three Heirs, and one dieth, B and the other surviveth and afterwards dieth, his Heir shall have a Formedon in the Remainder, as Heir to him, without mentioning in the Writ that he survived the other Joint-tenant, &c.

Flow. 52. a.

And in a Formedon in the Remainder, he ought for to shew the C Deed thereof, if the Demandant do require *Oyer* (c) of the Deed, but in the Count he shall not speak of any Deed; but the Tenant ought for

(a) In every Writ, if he makes Mention of a Remainder, he ought to suppose the Donee dead without Issue of his Body. 39 E. 3. 27.

(b) But he ought to make the Remainder tailed, or come to both of them by his Writ, and ought to shew the Survivor in his Count. 18 E. 3. 28. 38 E. 3. 26.

(c) And so, tho' it be after View, and Aid of the King granted. 18 E. 3. 34. But Note; The Tenant shall have no Answer as to the Deed; and therefore shall not say

*Ne Dona pas by the Deed*, but generally *Ne Dona pas*, as the Writ supposes; for the Deed is only Evidence to make the Demandant responsible. 10 E. 3. 22. 1 E. 3. 49, &c. and therefore the Tenant may plead *Non Tenure* after the Deed delivered. See 2 E. 3. 57. A Variance between the Writ and the Deed shall not abate it. 14 H. 6. 1. And Note; if he demand by Reason of a Use limited on the Feoffment, he need not shew the Deed. Dyer 277.



for to demand Oyer thereof, and then the Demandant shall shew the same, and in the Count shall not mention the Deed.

**D** And if the Remainder be once executed in the Writ of Formedon in the Descender, he shall never mention that Remainder, but the general Writ of Formedon shall serve in that Case, as appeareth by the Rule in the Register (a).

Writ of Formedon in Reverter.

**E** THE Writ of Formedon in the Reverter lieth where one giveth Lands to a Man in Tail, or in Frank-marriage with his Daughter, and afterwards the Donee, or his Heirs, dieth without Issue of his Body; then the Donor or his Heirs may bring a Writ of Formedon in the Reverter against him who is Tenant of the Lands so given.

Ant. 196. B.

Ant. 218. D.

And so if one Man giveth Lands unto another in Tail, and the Donor granteth the Reversion in Fee unto another, and then the Donee in Tail dieth without Heir of his Body, the Grantee of the Reversion shall have a Writ of Formedon in the Reverter to recover that Land: But if he grant the Reversion unto another in Tail, and then the Donee dieth without Heir of his Body, then that Grantee of the Reversion shall have a special Writ, as appeareth before, amongst the Writs of Formedon in the Remainder; and for the Heir of the Donor, the Form of the Writ is such:

See before  
218 D. 2 E.  
3. Ma. Dy.  
125. 6 E. 3.  
5.

*Præcipe A. Ꝛc. quod redd' unum mess. Ꝛ viginti acr' terr' cum pertin' in G. quod C. pater præd' B. cujus hæres ipse est, dedit I. Ꝛ E. uxori ejus Ꝛ hæ' de eor' corporibus exeunt', Ꝛ quod post mort' prædict' I. Ꝛ E. ad præf. B. reverti debet per form' donationis, præd' I. Ꝛ E. obierunt sine hæred' de corporibus suis exeunt', ut dicit, Ꝛ nisi, Ꝛc.*

Vide 4 Eliz.  
Dy. 216. A.  
22 H. 6. 36.

**F** And if Lands be given in Tail, the Remainder to another in Tail, and afterwards the first Tenant in Tail dieth without Issue, and the second Tenant in Tail in the Remainder doth enter into Religion, and is professed; the Donor or his Heirs shall have such a Writ of Formedon in the Reverter:

*Quod C. pat' D. cujus hæ' ipse est, dedit F. Ꝛ hæredibus de corpore suo exeunt', ita quod si idem F. sine hæred' de corpor' suo exeunt' obierit, prædict' mess. Ꝛc. H. Ꝛ hæred' de corpore suo exeunt' remaner', Ꝛ quod post mortem præd' F. Ꝛ postquam præd' H. habit' religion' assumpsit ad præf. D. reverti debet per form' donation' præd', eo quod præd' F. obiit sine hæred' de corpore suo exeunte, Ꝛc. Ꝛ nisi, Ꝛc.*

And if C. give Lands in Tail to E. and to F. his Wife, and unto the Heirs of their two Bodies begotten, and the said C. hath Issue G. and B. and dieth, and afterwards G. dieth, and B. granteth the Reversion to H. for Life, and afterwards E. dieth, and F. dieth without Issue of their

(a) And Note; Where a Grant is by Fine of Lands in Tail, yet the Issue shall have a *Scire facias*, altho' the Father was (never) seised, 15 E. 3. Barr. 255.

their Bodies, &c. *B.* shall have a Formedon in the Reverter in this Form :

[220.] *Quod C. dedit E. & F. uxori ejus, & hæred' de corporibus, &c. exeuntibus, & quod G. filius & hæres prædict' C. frat' præd' B. cujus hæres ipse est, post mortem præd' E. concessit H. ad totam vitam suam post mortem præd' F. habend', & quod post mortem prædictor' F. & H. ad præfat' B. reverti debet per formam donationis & concess. præd', eo quod prædict' E. & F. obier' sine hæred' de corporibus suis exeuntibus, &c.*

And it seemeth in that Case, that if *H.* had survived *F.* and had entred into the Land, and had been seised of the Land for Term of his Life, and then had died, that then the said *B.* shall not have a Formedon in the Reverter, but a Writ of Entry *ad terminum qui præterit*. But if *H.* have not entred into the Land after the Death of *F.* then the said *B.* shall have the Writ of Formedon in the Reverter. But if *H.* have entred into the Land after the Death of *F.* and had aliened the Land in Fee, then *B.* ought to have had a Writ of Entry *in consimili casu* during the Life of *H.* and after the Death of *H.* a Writ of Entry *ad communem legem*.

And if *F.* lease Lands unto *P.* for Term of Life, and hath Issue a Son and a Daughter, and dieth, and the Son granteth the Reversion to *I.* and to the Heirs of his Body begotten, and afterwards the Tenant for Term of Life dieth, and the Tenant in Tail dieth without Issue, &c. and then the Son who was Donor dieth, the Daughter shall have a Formedon in the Reverter in this Form :

*Quod F. dedit P. ad totam vitam suam, & quod T. filius & hæ' præd' F. frater præd' B. cujus hæ' ipse est, concessit I. habend' post mortem ipsius P. eidem I. & hæred' de corpore suo exeunt', & quod post mortem prædict' P. & I. præfat' B. reverti debet per form' donation' & concessionis prædict', & quod præfat' I. obiit sine hæ' de corpore suo exeunte, ut dicit, &c.*

And if Lands be given in Tail, and the Tenant in Tail hath Issue two Daughters, and afterwards one of the Daughters hath Issue a Daughter *B.* and the other Daughter hath Issue another Daughter *C.* and afterwards *B.* hath Issue *I.* and then all the Daughters die, and then the said *I.* dieth without Issue of his Body, the Donor or his Heir shall have such Writ :

*Et qui post mort' prædict' E. & F. & M. & A. filiar' & hæ' eorund' E. & F. & I. fil' præd' M. & hæ' eorundem M. & A. ad præf. I. de B. reverti debent, &c. eo quod prædict' I. &c. fil' prædict' M. obiit sine hæred' de corpore suo exeunt'.*

In a Formedon in the Reverter in his Count he ought to lay the C Esplees in the Donor, and in the Donee.

N. E. 150.

In a Formedon in the Reverter he ought to mention the eldest Brother who survived his Father, &c. because he held the Estate, although that he was not seised of the Land ; as if the Donor hath Issue two Daughters and dieth, and the eldest Son dieth before he entreth into the Land. In a Formedon in the Reverter brought by the youngest Son, he ought to mention the eldest Son, who was his Brother, because he was once



once Heir to the Donee ; but if the eldest die in the Life-time of the Father, then the youngest Son in the Writ (a) brought by him shall not mention him as Heir to the Father, because he was never Heir *in facto* to the Father, but in a Writ of Right, which is called *Præcipe in Capite*, brought by the youngest Son, as Heir to his Father, although the eldest Son be dead in the Life of the Father, yet in his Count he ought to make Mention of the eldest Son, because by Possibility he might have held the Estate, and have been Heir to his Father.

E And if a Man give Lands in Tail, and the Tenant in Tail hath Issue and dieth, and the Issue dieth without Heir of his (b) Body before he entreteth into the Land, the Donor may bring a Formedon in the Reverter, supposing that the Donee died without Issue, &c. and that Writ was awarded good, *M. 18. E. 2.* because the Issue was not living at the Time of the Purchase of the Writ ; and he cannot have a Formedon in the Reverter of the Seisin of the Issue, because the Issue died before he had any Seisin of the Land.

### Writ of Ejectione Firmæ.

F THE Writ of *Ejectione firmæ* lieth, where a Man doth (c) lease Lands for Years, &c. and afterwards the Lessor doth eject him, or a Stranger doth eject him of his Term, the Lessor shall have a Writ of *Ejectione firmæ* ; and the Form of the Writ is such :

G Rex Vic', &c. Si A. fecerit, &c. tunc pone, &c. B. quod sit coram Justic' nostris, &c. ostensurus quare vi & armis manerium de I. quod pref. T. dimisit A. ad termin' qui nond' præterit, intravit, & bona & catall' ejusdem A. ad valent', &c. in eod' manerio inventa cepit & asportavit, & ipsum A. a firm' sua prædict' ejecit, & alia enormia ei intulit ad grave damnum, &c. Vide 1 &c. 2  
M. Dy. 117.  
Ingrave's  
Case.  
Dyer 228.

And there is another Form of Writ thus :

T t t

Ostensf.

(a) See 2 *E. 3. 25. N. Br. 150. 18 E. 2. Formedon 59.* The Plaintiff counts in this Writ, that he to whom the Tenements were given. — And held that the Right came to the Donor, altho' the Donor was dead, living the Donee in Tail. But in a *contra formam Collationis*, 'tis otherwise, *F. contr. form' Coll. 7. 3 E. 3. See 3 E. 3. Formedon 43.*

(b) See 7 *E. 3. 34. 18 E. 3. 28. Eo quod* the Issue died without Issue ; and so the Writ ought to be per *Sbard*, when the Issue was seised. 22 *H. 6. 36. 18 E. 3. 42.* See a *Formedon in Reverter* awarded good, supposing that the Donee died without Issue, where he had Issue, who survived and was seised ; *contr.* in the same Case in a *Scire*

*facias* by him in Remainder on an Estate Tail. 25 *E. 3. 49.* and per *Skip.* If the Issue was seised after the Death of the Donee, he ought to suppose that the Issue died without Issue ; *sed alii contr.* 26 *E. 3. 75.* See a Supposal, per *Morr.* of the Donee, *Eo quod* the Donee died without Issue. *Dyer 216.*

(c) Note ; If he be not in a Real Possession at the Time of the Ejectionment, this Writ does not lie. *Kelv. 130.* This Writ lies of a Gorse. *Dyer 228. 11 E. 10. Ant. 198.* where it lies, *Vide ibid.* and 21 *E. 4. 10.* and 30. 1 *H. 5. 3. 12 H. 4. 10. Dyer 89.*

Also this Writ lies against the Ejector, tho' he has aliened. 12 *H. 4. 10.* See *Dyer 89. Bona & Catalla* omitted.

6 R. 2. Fitz.  
Ejectione  
firm. econt.

*Ostendit. quare vi & armis manerium de B. quod I. pref. A. dimisit ad termin' 7. annor' infra termin' illum intravit, & illud per magnum tempus occupavit, & ipsum A. quo minus exitus manerii prædicti juxta form' dimisit præd' percipere potuit, impedivit, & bona, &c*

Plow. 222.  
1 Salk. 5.  
Co. Lit.  
128. b.

(a) And in that Writ he shall recover his Term again, if the Term H be not ended, and the Process is Attachment and Distress, and Process of Utlagary. And Anno 14 H. 7. in *Ejectione firmæ* brought against a Stranger, the Plaintiff had Judgment for to recover his Term, and thereupon the Defendant brought a Writ of Error, and the Judgment was affirmed, and Execution awarded for the Plaintiff.

And 17 H. 8. Such Judgment was given in the Common Pleas, that I he should recover his Term and his Damages.

Ant. 198.  
[221.]

If a Man lease Lands for Years, and afterwards suffer a feigned Recovery against him by a Writ of Entry in the Post, or other Writ, if he who recovereth entreth, the Termor shall have an *Ejectione firmæ* against him by Force of the Statute of 21 H. 8. cap. 15. because the Statute giveth him Power to retain, hold, and enjoy his Term. And by that it appeareth, that he who recovereth doth Wrong unto him, if he oust him of his Term; but before the said Statute, the Lessee could not have such Writ, because he who recovered came in by Course of Law.

And if a Man lease Lands for Years, and afterwards granteth the A Reversion in Fee, and the Lessee attorneth; now if the Grantee of the Reversion do put out the Termor, he shall have an *Ejectione firmæ* against him. And so if the Reversion do escheat, and the Lord by Escheat B eject the Termor, he shall have an *Ejectione firmæ* against him.

And if he in the Reversion be a Villain, and the Lord claim the C Reversion, and afterwards eject the Termor, he shall have an *Ejectione firmæ* against him.

### Writ

(a) And therefore he shall not have this Writ after a Re-entry, by *Hussy*. 21 E. 4. 11. So Entry of the Plaintiff pending the Writ abates it. *Dyer* 226. Yet *Quere*. 13 El. 13. altho' the Plaintiff enters pending the Writ, he shall recover his Damages;

for it is but an Action of Trespass in its Nature. But the Entry here seemed to be after the Term ended; and *Dyer* said, that before 14 H. 7. the Judgment was only, that the Plaintiff should recover his Term. *Dyer* 13.



## Writ of Aiel or Befaiel.

**D** **T**HE Writ of Aiel or Befaiel lieth, where the Grandfather or Great Grandfather was seised in his Demefn as of Fee of any Lands or Tenements of Fee-simple the Day of his Death, and dieth, and a Stranger doth abate or entreth the same Day upon him, and deforceth the Heir, the Heir shall have that Writ of Aiel or Befaiel, as the Case is, and it behoveth not that the Grandfather die seised; or if he be seised the Day that he died, it sufficeth to maintain this Action; and the Form of the Writ is such:

Note, That in this Writ a Man cannot make Title higher than his Befaiel; or the Brother of his Befaiel, 3 E. 3. *Item nota Fitz.*

*Aiel.* 6. 40 E. 3. 38. It was found by Assise, that the Ancestor did not die seised, yet to have Cousinage; for if he were seised the Day in which he died, it sufficeth.

**E** *Rex Vic', &c. Præcipe A. quod juste, redd' B. unum messuag' cum pertin' in E. de quo W. avus præd' B. avia præd' B. vel proavus, vel proavia præd' B. cujus hæres ipse est, fuit seist' in Dominico suo ut de feodo die quo obiit, ut dic', & nisi fecerit, &c. & prædict' B. fecerit secur', &c. tunc sum' prædict' A. &c.*

In *Aiel* the Defendant said, that the *Aiel* had Issue *W.* eldest Son, who survived

the *Aiel*, and committed Felony, and was abjured, and afterwards taken and in Eyre adjudged a Felon; and good Plea. 6 E. 3. *Fitz. Aiel.*

**F** And the Process in that Writ is Summons and *Grand Cape* before Appearance; and after Appearance, if the Tenant make Default, a *Petit Cape* shall be awarded.

**G** And although that the Ancestor go in Pilgrimage beyond the Sea, 13 E. 3. and there dieth, yet the Writ of Aiel shall be general, as is afore-*Aiel* 2. said. *Ant.* 196.

And so if the Grandfather enter into Religion, and is professed, the Heir shall have a Writ of Aiel, if the Stranger do abate, and the Writ shall be general, and shall not speak of his Entry into Religion, or of his Profession, &c. 21 E. 3. 10. Br. Cosinag.

**H** And the Aunt and the Niece shall join in a Writ of Aiel of the Seisin of their Grandfather, by Equity of the Statute. And the Statute shall serve for those dying seised before the Statute, as for those dying seised since the Statute.

And two Coparceners brought a Writ of Aiel, and by their Count they did suppose the Ancestor to be Great Grandfather to the one, Tresaiel to the other, and yet it was adjudged good. And the Writ in the Register is such:

*Rex Vic', &c. Præc' A. quod juste, &c. redd' B. & C. unum molendinum, &c. de quo D. avus prædict' B. & proavus præd' B. cujus hæred' ipsi sunt, fuit seistus, &c.*

6. In *Befaiel*, the Release of the *Aiel* Warranty is good Plea, 12 E. 3. Joinder in Action.

## Writ of Cofinage (a).

**22 E. 3. 13. cont.** **T**HE Writ of Cofinage lieth, where the Tresaiel was seised in his Demefne as of Fee the Day he died of any (b) Lands or 'Tene-ments, and dieth, and a Stranger doth enter and abate, then his Heir shall have his Writ of Cofinage; and the Form of the Writ is such:

*Rex Vic', &c. Præc' A. quod juste, &c. redd' B. unum mes. cum pertin' K in N. de quo (c) W. consanguineus vel consanguinea præd' B. cujus hæres ipse est, fuit seisitus in dominico suo ut de feod' die quo obrit, ut dicit, & nisi, &c.*

And a Man shall have a Writ of Cofinage of the Seisin of the Brother L of the Tresaiel. *6 E. 2. Cofin 10, 11.*

**22 E. 3. Brief 308.** And the Heir of the Lord who was his Tresaiel may have a Writ of M Cofinage of the Rent of the Seigniorie against the Tenant, if he desorce him of the Rent, and may count of the Seisin of his Tresaiel; or if he will, he may have a Writ of Customs and Services against the Tenant at his Election.

**46 E. 3. 15. 12 H. 7. 4. 4 E. 3. Aiel 4. 10 E. 3. 45. 12 H. 4. Cofin 2. N. B. 118. cont.** And if a Man have a Writ of Aiel, he shall not bring a Writ of Co- N finage, and if he do, the Tenant may abate the Writ by pleading the Seisin of the Great Grandfather; and also a Man shall not have a Writ of Cofinage of the Seisin of his Great Grandfather, but shall be put to his Writ of Befaiel, &c.

Nor a Man shall not have a Writ of Cofinage of the Death of his Uncle, because he may have an Affise of Mortdauncester of his Seisin.

**44 E. 3. 13. 2 H. 5. 1. 21 H. 3. Cofin 13. 14 E. 3. Cofinage 6. Supra G.** And Cofinage doth not lie between Privies in Blood, no more than an Affise of Mortdauncestor, but shall be put to their *Nuper obiit.* **O**

And if a Tresaiel goeth beyond Sea and entreth into Religion, and be professed; yet the Writ of Cofinage shall be general, as the Writ of Aiel shall be. And the Proceß is Summons, Grand Cape, and Petit Cape.

(a) In Cofinage, a Man makes but an oblique Descent only from the Brother of the Great Grandfather, which is four Degrees; but where the Descent is lineal, it is two Degrees. *30 E. 1. Cofinage 15. 32 E. 1. 34.*

(b) See *cont.* that he is put to his Writ

of Right, *22 E. 3. 16. 22 E. 3. 13.* And note; In some Writs when it is past the Great Grandfather, he shall be named Cofin; but in a Count so named abates it. *15 E. 3. Brief 323.*

(c) And he shall shew how Cofin in his Count. *12 H. 4. 1.*

*Writ*



## Writ of *Ad quod damnum*.

**T**HE Writ of *Ad quod damnum* lieth, where a Man will give Lands or Tenements in Mortmain, as to a religious House, or to a Body Politick in Fee-simple, then he ought for to have the King's License, and the License of the chief Lords to make such Gift or Grant, and before such License be granted, and the Course is to sue unto the King, to have a License to sue that Writ out of the Chancery, directed unto the Escheator, to enquire what Damage it would be to the King, or unto other Persons, if the King do grant such License: And upon the Return of that Writ certified in the Chancery, the King ought to give Leave, that he may alien or give in (a) Mortmain; and that Inquisition ought to be certified into the Chancery under the Seals of the Escheator and of the Jurors, by whom the Inquisition was found; and the Form of the Writ is such: [222.]

**A** *Rex dilecto sibi I. de K. Eschaetori suo in Com' L. salutem. Præcipimus tibi, quod per sacramentum proborum & legalium hominum de Balliva tua vel de comitat' tuo, per quos rei veritas melius sciri poterit, diligenter inquiras, si sit ad damnum vel ad præjudicium nostrum vel aliorum, si concedamus B. quod ipse unum messuagium, duas acras terræ, & unam acr' prati cum pertin' in W. dare possit & assignare cuid' Capellano divina pro anima ipsius B. & animab' patris & matris, ac antecess. suorum, & omnium fidelium defunctorum in Capella Beatæ Mariæ de W. vel in Ecclesia Parochiali beatæ Mariæ de S. singulis diebus celebraturo; Habend' & tenend' eidem Capellano & successoribus suis Capellanis divina in Eccles. prædict' vel in ead' Capella pro animabus prædict' singulis diebus, prout prædictum est, celebraturo in perpetuum, necne, & si sit ad damnum vel præjudicium nostrum, aut aliorum, tunc ad quod damnum & quod præjudicium nostrum, & ad quod damnum & quod præjudicium aliorum. Et quorum, & qualiter, & quomodo & de quo, vel de quibus prædict' mess. terra & pratum teneant, & per quod servitium, & qualiter & quomodo, & quantum valeant per annum in omnibus exitibus, juxta verum valorem eorundem, & qui & quot sunt medii inter nos & præf. B. de Mess. terra & prato prædict', & quæ terræ & quæ tenementa eidem B. ultra donationem & assignationem prædict' remaneant, & ubi, & de quo, vel de quibus, teneantur, & per quod servitium, & qualiter, & quomodo, & quantum valeant per annum in omnibus exitibus, & si terræ & tenementa eidem B. remaneant ultra donationem & assignationem prædict' sufficient' ad consuetud' & servitia tam de præd' messuag', terra, & prato sic datis, quam de aliis terris & tenemen' sibi retentis, debita faciend', & omnia alia & singula onera quæ sustinuit, & sustinere consuevit, ut in sectis, visibus franci pleg', auxiliis, tallagiis, vigiliis, finibus, redemptionibus, amerciamentis, contributio-*

(a) Entry for Mortmain. Note; Disseisor and Disseisee, Tenant for Life, and he in Remainder of a Seignory, shall have only one Year. *Kelv. 111. Quare.*

*contributionibus, Et aliis quibuscunque oneribus emergentibus sustinend'. Et quod idem B. in assis, juratis, Et aliis recognitionibus quibuscunque poni possit, prout ante donationem Et assignationem prædict' poni possit, ita quod patria per donationem Et assignationem prædict' in ipsius B. defectu, magis solito non oneretur seu gravetur, Et inquisitionem inde distincte Et aperte factam nobis in Cancell' nostra sub sigill' tuo Et sigillis eorum, per quos fact' fuerit sine dilatione mittatis, Et hoc breve. Teste, &c.*

Or thus: *Quod hæredes ipsius B. in ass. juratis, Et aliis recognitionibus quibuscunque poni possint, prout antecessores sui ante donationem Et assignationem præd' poni consuever', ita quod patria, &c.*

By which it appeareth, that it is Damage to the Country, that a Freeholder who hath sufficient Lands to pass upon Assises and Juries, should alien his Lands in Mortmain, by which Alienation his Heirs should not have sufficient Lands after the Death of the Father, to be sworn in Assises and Juries.

And by the Rule of the Register, if a Chaplain or a Woman will give their Lands or Tenements in Mortmain; yet in the Writ of *Ad quod damnum* shall be that Clause, *Et quod idem, &c. in assis, juratis, Et aliis recognition' quibuscunque poni possint*; by which it appeareth, they ought to have sufficient Lands, besides Lands to descend to their Heirs.

And if a Chaplain and Layman will alien in Mortmain jointly by C Licence, then the Writ of *Ad quod damnum* shall be in this Form:

*Et quod idem A. Et B. Et hæred' prædict' B. Capellani, in assis, juratis, &c. poni possint, prout idem A. Et antecessor' ipsius B. Capellani ante donationem, &c. poni consuever', ita quod patria, &c. in ipsius A. Et hæred' præd' B. defect' magis solito non oneretur, &c.*

And if one Abbot will give Lands or Tenements in Mortmain to D another Abbot or Prior, or Body corporate, yet he ought to have the (a) King's License so to do, because of the Words of the Statute of Mortmain. *Ita quod terr' Et tenementa ad manum mortuam non deveniant quoquo modo.* And there he ought for to sue a Writ of *Ad quod damnum* to enquire as aforesaid. But in the Writ shall be this Clause, *Et quod idem Abbas, &c. in ass. Et jurat', &c.* nor that Clause, *Ita quod patria, &c.* shall not be put in that Writ of *Ad quod damnum*. But now the common Experience is, that they will not sue the Writ of *Ad quod damnum* when they purchase Leave to alien in Mortmain; but the Use is, to have these Words in the End of the King's Patent of License; *Et hoc, absque aliquo brevi de ad quod damnum, seu aliquibus aliis brevibus, inquisitionibus, aut mandatis nostris superinde habend' Et prosequend'.* But it seemeth, those Patents are dubious whether they be good or no; if it be evidently proved, that such Patents are unto the Damage of others who are the King's Tenants, and by which the King's Tenants ought to have Wardships or Escheats, &c. and by which the King loseth the Wardship of his Tenants, or that the King loseth any Advantage which he

(a) And therefore if the Tenant enfeoffs the Abbot himself, the Lord may enter. *Kelw.* 111.



he might have, if such Patents were not granted. And therefore I conceive, that the best Course is, to sue forth such Writs of *Ad quod damnum*, to enquire to what Damage such Licenses in Mortmain shall be to the King or others, so that the King be not deceived in his Grant. And see a good Cause for the same in the Title of Grants in the Abridgment. *H. 16 E. 3. pl. 53. Bro. 651.* where the Charter was repealed.

**A** And there is another Writ of *Ad quod damnum*, if it be to the Damage, &c. If the King grant to *B.* that he may give five Houses, &c. to *C.* Guardian of the Chapel, of our Lady *St. Mary*, and to his Successors, Guardians, and Chaplains of the foresaid Chapel, for the Maintenance of the said Guardian, and two Chaplains to do Divine Service in the said Chapel, and in the Church of *P.* &c. in the Honour, &c. and for the Souls, &c.

**B** And if the King will give License to one to grant a Rent unto an Abbot and his Successors, yet he ought for to sue forth a Writ of *Ad quod damnum*, if he have not these Words in the Patent; and this without any Writ of *Ad quod damnum*, &c. And the Form of the Writ is such:

*Si concedamus eid' A. quod ipse cent' marc' redditus cum pertin' in N. dare possit, & assignare dilectis nobis in Christo Abbati & Conventui de N. ac Priori & Monachis in Prioratu S. Jacobi Bristol', quæ est cella ejusdem Abbatis commorantibus, ad inveniend' duos Capellanos, &c. in Eccles. prioratus præd', tenend' eisdem Abbati & Conventui ac Prioratui & Monachis in dicto Prioratu commorantibus & successoribus suis, ad inveniend' duos Capellanos, &c. in Eccles. Prioratus prædict', ut prædict' est, singulis diebus celebratur' in perpetuum, necne. Et si sit ad dampnum, &c. ad quod damnum &c. & de quo, vel de quibus præd' redditus teneatur, & per quod servic' & qualiter, & quomodo, & qui, & quot sunt medii, ut in primo brevi.*

And it is not said in the Writ, what the Value is yearly, because Rent ought not to be extended.

**C** And if a Man sue to the King for a License to give an Advowson to two Chaplains, and to their Successors to hold to their proper Use, and that they may hold the same to them and their Successors, appropriate for ever, to say Divine Service, &c. he shall have a Writ of *Ad quod damnum*, to enquire, what Damage such Grant would be to the King or others, and that Writ appeareth in the Register. And in the Writ of *Ad quod damnum* the Substance of the Licence, to alien in Mortmain, ought to be expressed.

**E** And if a Man will exchange Lands, Tenements, or Rents with another Abbot, or Body corporate, upon the License (a) granted, he ought to sue forth a Writ of *Ad quod damnum*; and in the Writ both the Lands which are given, and the Lands which are taken in Exchange, ought to be mentioned, and to enquire of them as afore is said.

**F** There is another Manner of Form of *Ad quod damnum*, where the King granteth a License unto an Abbot or a Prior to purchase twenty Pounds Land, and afterwards one Man will give Lands to the said Abbot of the Value of five Pounds, another will give him Lands of the Value

(a) See 19 E. 3. *Mortm.* 8. Both of them were Men of Religion.

Value of forty Shillings, and another Man Lands of the Value of twenty Shillings; the Form of the Writ of *Ad quod damnum* shall be such:

2 H. 7. 6.

Rex Eschactori, &c. *Præcipimus tibi, si sit ad damnum, &c. si concedamus A. quod ipse unum messuagium, & centum acras terr' in N. B. de C. quod ipse unum messuagium, & 40 acras terræ cum pertin' in eadem villa, E. de F. quod ipse 30 acras terræ in eadem villa dare possit & assignare dilectis nobis in Christo, &c. habend' sibi & successoribus suis in partem satisfactionis 20 l. terrarum & reddituum per annum, quas Dominus Edwardus nuper Rex Angliæ avus noster per literas suas patentes eisdem Abbati & Conventui, tam de feodo suo proprio quam alieno, exceptis terris & tementis quæ de ipso avo nostro tenebantur in capite, concessit acquirend', & etiam I. de N. quod ipse unum messuagium cum pertinent' in eadem villa dare possit & assignare eisdem Abbati & Conventui, habend' & tenend' sibi & successoribus suis in perpetuum, in excambium pro uno messuagio in eadem villa eidem I. de N. per præd' Abbatem & Conventum dand' & concedend', habend' & tenend' eidem I. de N. & hæredibus suis in excambium præd' sicut prædictum est in perpetuum, necne, & si sit, &c. ut supra.*

Vide 16 El.  
Plow. Com.  
457. D.  
1 Inst. 52. b.

And by that Writ it appeareth, that he may have one Writ for divers Purchases to be made. And also that a License made unto an Abbot, in the Time of one King, is good to purchase Land in the Time of another King. G

There is another Writ of *Ad quod damnum* where the King granteth to an Abbot, or to a Bishop, License for to purchase an Advowson, and to appropriate the same to him and his Successors for ever. H

And another Writ where the King granteth unto an Abbot or Bishop, License for to appropriate an Advowson whereof they are seised in Fee in their own Right.

14 E. 3.  
Quar. Imp.  
13.

By which it appeareth, that a Bishop or an Abbot could not have appropriated an Advowson whereof they were seised in Fee in their own Rights, without the King's License; and if they did, it was forfeited for Mortmain. 21 E. 3. 5.

38 Aff. 52.  
Br. Mortm.  
20. it is no  
Mortmain.  
21 E. 3. 18.  
Br. Mortm.  
16 & 31. it  
is no Mort-  
main, be-  
cause the  
Rent is ex-  
tinct.

And if an Abbot holdeth of another Man by a certain Rent-Service, the Lord (a) cannot release unto the Abbot that Rent without the King's License; and if he do, it is Mortmain, and the King shall have the Rent; and therefore is the Writ of *Ad quod damnum* ordained, that where the Lord hath License to release unto the Abbot that Rent, to enquire to whose Damage the same shall be, &c. as it shall be of Lands, &c. I

[224.]

There is another Form of *Ad quod damnum*, where the King giveth a License to alien Lands and an Advowson, which are holden of him in Capite, unto an Abbot, and that he do appropriate them. And another Form of Writ where the King granteth a License to one to alien certain Lands, and a Reversion of other Lands, to a Chaplain in Mortmain. A

And

(a) But if he releases the Rent, saving to himself the Services; or if he release to hold of him in Frankalmoigne, it is not Mortmain. 10 F. 3. 5. 21 E. 3. 18. *Quare*. 10 E. 3. Mortm. 17. 1 Bro. Mortm. 31.



- B** And if the Villain of an Abbot or Prior do (a) purchase Lands or Tenements in Fee, the Abbot or Prior cannot enter into them without the King's License; and if he do, it is Mortmain. And it seemeth that the Law is such, because there is a Writ of *Ad quod damnum* in the Register, to enquire to whose Damage the same is; and if the King granted such License unto an Abbot or Prior, that they may enter into such Lands or Tenements which their Villains have purchased.
- C** And see the Statute *De Religiosis*, how that Case shall be taken to be within the Words of the Statute, or by Equity of the Statute.  
And it appeareth by the several Forms of Writs of *Ad quod damnum* which are in the Register, that the Writ ought to be made according to the Letters Patent of License, because he ought to rehearse the Effect of the Letters Patent therein; and therefore the Forms of the Writs of
- D** *Ad quod damnum* do vary as the Letters Patent themselves do vary. And it appeareth by the Register, that if a Man do purchase Letters Patent of License to give Lands unto an Abbot in Exchange for a Rent, which the Abbot releaseth to him, &c. that he shall have a Writ of *Ad quod damnum* thereupon. 16 E. 3.  
Excha. 2.  
Perk. 2.
- E** And if a Man do purchase a License to found a House with Lands, or to make a Prebendary, and to give Lands to the same, &c. that he ought to have a Writ of *Ad quod damnum* upon the same.
- F** And if a Man doth devise Lands or Rents to his Executors and to their Heirs, to dispose according to his Will, and afterwards he maketh his Will, that they give the same in Mortmain; they ought to have the King's License to make the Grant, and a Writ of *Ad quod damnum* upon the same, as appeareth by the Register.
- G** If an Abbot, or a Dean and Chapter, have a Rent in Fee issuing out of Lands, and the Tenant of the Land will grant by his Deed, that they and their Successors shall distrain for that Rent in other Lands, it appeareth by the Register, that he ought to have the King's License to make such Grant. And a Writ of *Ad quod damnum* shall be to enquire what Damage or Prejudice the same shall be to the King or others, &c. and yet it is hard to prove, how that shall be taken to be within the Words of the Statute of Mortmain, because such Grant is a good Grant of a Rent in Fee, although that there were not such Rent before to the Abbey, or Dean and Chapter. It seemeth that the Grant made without License (b) shall be as a new Grant in Law. *Tamen quære*. 17 E. 3. 57.  
29 E. 3. 33.  
21 E. 3. 24.  
cont. 7 E. 3.  
57. cont.  
9 H. 6. 9.  
Litt. 48.  
41 E. 3. 15.  
9 H. 6. 9.  
1 Aff. 10.  
Br. Aff. 105.
- H** There is another Manner of *Ad quod damnum*, and that is, where the King's Tenant will alien his Lands which he holdeth of the King to another in Fee, or in Tail, or for Life, then by the Course of Law he ought to have the King's License by his Letters Patent so to do, and before the Alienation be made, the King ought to be certified by a Writ of *Ad quod damnum*, what Damage or Prejudice that Alienation shall work to the King: But at this Day that Writ is not used to be granted, 32 H. 6. 27.  
cont. 41 Aff. 3.  
cont. 10 Aff. 4.  
cont.
- U u u but

(b) But it is otherwise, where the Villain has the Lands by Descent. 48 E. 3. 29. 41 E. 3. 16. 19 H. 6. 57. 13 E. 3. Brief 262.

(a) See this same Case in Question. 9 H. 6. 9.

but only the License to alien without Regard to any Writ of *Ad quod damnum* to enquire thereof. But yet such License must not be allowed of by the Justices when the same is shewed, without bringing a Writ out of the Chancery unto the Justices, which is called *Quod permittat*, &c. for which see *M. 33 H. 6.* in Title *Fines*. And the Form of the Writ of *Ad quod damnum* is such:

*Rex Eschactori, &c. Præcipimus, &c. inquisit' si sit ad damnum vel præjudicium, &c. Si concedamus I. quod ipse de manerio suo de N. cum pertinent' quod de nobis tenetur in capite, ut dicitur, feoffare possit P. habendum & tenendum sibi & hæredibus suis de nobis & hæredibus nostris, per servitia inde debita & consueta in perpetuum, necne. Et si sit ad damnum vel præjudicium nostrum aut aliorum, &c. Et quod præjudicium aliorum, & quorum, & qualiter, & quomodo. Et si manerium prædict' teneatur de nobis in Capite, ut prædictum est, an de alio. Et si de nobis, tunc per quod servitium, qualiter, & quomodo, & quantum prædict' manerium valeat per annum in omnibus exitibus juxta verum valorem ejusdem. Et si quæ terræ & tenementa remaneant eidem I. ultra manerium prædict', tunc quæ terræ & tenementa, & ubi, & de quo, vel de quibus teneantur, utrum videlicet de nobis, an de alio, & si de nobis, tunc per quod servitium, & qualiter, & quomodo. Et si de alio, tunc de quo, vel de quibus, & per quod servitium, & qualiter, & quomodo, & quantum valeant per annum in omnibus exitibus. Et inquisitionem inde distincte & aperte, &c.*

[225.]

And if the King will grant a License unto his Tenant who holdeth of him in *Capite* to alien unto another in Fee, and to take back an Estate unto him and his Wife, and unto the Heirs of their two Bodies begotten, from the same Alienee; and for Default of such Issue, the Remainder unto another in Fee-tail; and for Default of such Issue, the Remainder to the right Heirs of the first Donee, he in that Case shall have a Writ of *Ad quod damnum*, &c. to enquire, &c. and yet such Writs are not used to be granted upon such License.

There is another Writ in the Register, that if the King's Tenant doth alien his Lands, of which a Woman holdeth Part in Dower for Term of her Life, and another holdeth other Parcel thereof for Term of her Life, and he himself holdeth the Residue in Fee: Now he shall have a Writ of *Ad quod damnum*, rehearsing all the Estates and Licenses.

If the King granteth Lands to one for Life, and afterwards granteth the Reversion to *D.* in Fee, and then *D.* dieth, and his Heir granteth the Reversion to *R.* and *W.* in Fee, and afterwards *R.* and *W.* grant the Reversion to *M.* for Life, and all those Grants are made without License, and afterwards *M.* sueth to have a License, that she may enter after the Death of the first Tenant for Life; she shall first have a Writ of *Ad quod damnum*, to enquire, &c. and the Writ shall be such:

*Rex dilecto Clerico suo F. de C. Eschaet' suo in Comitatu C. salutem. Supplicavit nobis M. ut cum A. dudum concessisset quod unum messuagium cum pertinent' in N. quod de nobis tenetur in capite, ut dicitur, & quod I. & B. uxor ejus tenent ad vitam ipsius B. ex dimissione prædict' A. quod etiam post mortem ipsius B. ad præfat' A. & hæred' suos reverti deberet post mortem ejusdem B. D. & hæred' suis remaneret, ac F. filius & hæres ipsius D. ulterius*



*rius concess. quod mesuagium prædictum cum pertin', quod ad ipsum F. & hæred' suos ratione concessionis & attornamenti sibi in hac parte fact' post mort' ejusdem B. reverti deberet, post mortem ipsius B. R. & W. & hæred' suis remaneret, iidemque R. & W. concessissent, quod mes. prædict' cum pertin' quod ad ipsos R. & W. & hæred' suos ration' concess. & attorn' prædict' sibi de præmiss. fact' post mortem ipsius B. reverti debet, post mortem ejusdem B. præf. M. ad totam vitam suam remaner', ita quod post mortem ipsius M. mes. illud cum pertin' post mortem ipsius B. K. & hæred' ipsius K. remaneret, licentia nostra super hoc non obtenta, Velimus concedere eidem M. quod ipsa mes. illud cum pertin' post mortem ipsius B. ingredi possit & tenere ad totam vitam suam de nobis & hæredibus nostris per servitia inde debita & consueti, ita quod post mortem ipsius M. prædict' mes. cum pertin' præfat' K. & hæredibus ipsius K. remaneat, tenend' de nobis & hæred' nostris per servitium supradict' in perpetuum: Nos per vos certiorari volentes, si absque damno & præjudicio nostri aut alterius cujuscunque supplicationi præd' annuer' valeamus in hac parte, vobis mandamus quod per sacramentum, &c. (ut supra usque ibi) aut aliorum, si concedamus præfat' M. quod ipsa mesuag' prædict' cum pertin' post mortem ipsius B. ingredi & tenere possit in forma prædicta, necne. Et si, &c. (ut supra).*

And by that it appeareth that an *Ad quod damnum* shall be awarded, where the King granteth a License unto one for to enter into the Land, which Land the King might grant for a Fine for Alienation. And also it doth appear by that Writ, that a Clerk and a Chaplain was then Escheator of the County.

C And if *B.* the King's Tenant doth alien to *A.* in Fee, and afterwards *A.* giveth back the same Lands to the same *B.* and *C.* his Wife in Tail, and then *A.* dieth, and then *B.* dieth without Heir of his Body, and afterwards *D.* Brother and Heir of *A.* doth release all his Right in the Land unto *C.* who was the Wife of *B.* in Fee without the King's License, if the King will pardon that Trespass for making of that Release, a Writ of *Ad quod damnum* shall be awarded to enquire what Damage or Prejudice the same shall be to the King, and the Writ appeareth in the Register; but such Writs are not used to be sued forth at this Day, but such Pardons are allowed for the Tertenant, without any such Writ of *Ad quod damnum*, &c. But yet if the King be damnified by any such Pardon, in any Point whereof he had Notice; whether the same shall make void the Pardon or not, *Quære*.

D And if the King will grant to one to make a Ditch of a certain Length, in his own Land, next to the King's Pond adjoining, to draw the Water from the Pool by the Ditch to his Mill, rendring yearly to the King and his Heirs a certain Rent, a Writ of *Ad quod damnum* shall be awarded for to enquire what Damage the same shall be to the King, and the Writ shall recite the Grant, and the Rent reserved.

E And if there be an antient Trench or Ditch coming from the Sea, by which Boats and Vessels use to pass to the Town, if the same be stopped in any Part by Outragiousness of the Sea, and a Man will sue to the King to make a new Trench, and to stop the antient Trench, &c. they

ought first to sue a Writ of *Ad quod damnum*, to enquire what Damage it will be to the King or others.

And if the King will grant to any City the Assise of Bread and Beer, F and the Keeping of Weights and Measures, an *Ad quod damnum* shall be first awarded, and when the same is certified, &c. then to make the Grant.

[226.] And it appeareth by the Register, that upon every Grant to be made by the King, of Lands, Tenements, Liberties, or other Things, that a Writ of *Ad quod damnum* shall be first directed to the Escheator, to enquire what Damage it will be to (a) the King or others; and in those Writs in the Register, appear notable Forms of Grants made in divers Manners; for in every Writ the Manner of the King's Grant, and the Effect thereof is specified and recited in the Writ of *Ad quod damnum*.

And if a Man will give Lands unto the King in Fee, unto the In- A tent that the King shall give them to a religious House, yet a Writ of *Ad quod damnum* shall be directed to the Escheator to enquire what Damage that shall be to the King, or others, if the King should accept thereof, and give the same to the religious House.

And if the King seifeth Lands aliened in Mortmain, and afterwards B will give them again to the Abbot, &c. in Fee, yet a Writ of *Ad quod damnum* shall be awarded, to enquire to whose Damage it shall be, &c.

And so if an Abbot purchaseth Lands without License, and afterwards the King will pardon him for the Purchase, and grant that he may retain and keep the Lands, yet an *Ad quod damnum* shall issue to enquire, &c.

And if the King's Tenant doth alien without License, for which the King seifeth the Lands: If the King will restore the Lands, and pardon the Trespass, yet the Writ of *Ad quod damnum* shall issue forth to enquire what Damage it is to the King, if he make such Grant; but that is not in use at this Day; but to pay a Fine, and upon the License to enter, without suing such Writ.

If the King be Lord, and there be Mesne and Tenant, and the Tenant holdeth of the Mesne by Homage and 20 s. and the Mesne holdeth of the King *in Capite*, and afterwards the Mesne doth release unto the Tenant the 20 s. to hold to him and his Heirs by Homage, and a Penny, without the King's License, the King may seise those Services; and if he will by his Grant make Restitution to the Tenant Paravail, an *Ad quod damnum* shall be granted, to enquire to whose Damage, &c.

And it appeareth by the Register, that if the King's Tenant doth in- D trude after the Death of his Ancestor, without suing his Livery, if the King will pardon the Intrusion, yet a Writ of *Ad quod damnum* shall issue to enquire to whose Damage the King's Pardon shall be, &c.

If

(a) Note; If the King grants Liberties; as a Market, Fair, &c. to the King's Nu- sance, after the King has lost any Profit, he may have a *Scire facias*, and repeal the Patent, and recover all the Profits taken

by the Patentee in the mean Time, *per Cur.* 11 H. 4. 5. See 16 E. 3. Grants 53. what Liberties the King may grant, *vide post.* 230.



E If a Forester of the King's Forests, who holdeth his Office of the King, granteth the same to another, he ought to have the King's License; and before such License shall be granted, a Writ of *Ad quod damnum* shall issue, what Damage such License shall be to the King.

F And so if the King will license one to cut down his Trees or his Wood in his Forest, and to make Assart of the Wood, or to put it to Tillage, a Writ of *Ad quod damnum* shall be awarded, as appeareth by the Register.

G And if the King will grant Parcel of his Waste within his Forest to another in Fee, rendring Rent, and that the Feoffee may enclose the same with a Hedge or a Ditch, &c. a Writ of *Ad quod damnum* shall be awarded, to enquire to what Damage of the King or others the said Grant shall be.

And if he will lease the same for Years, rendring Rent, a Writ of *Ad quod damnum* shall be awarded to the Keeper of the Forest, to what Damage of the King or of his Forest the same shall be.

And if the King will grant Part of his Free Chase to one in Fee rendring Rent, and that he may enclose the same with Hedge and Ditch, &c. a Commission shall be directed to certain Persons, to enquire what Damage to the King or others the same shall be, &c. and thereupon a Writ shall be directed to return the Enquest and Panel before the Commissioners at a certain Day assigned by the Commissioners; and the Commissioners shall make a Precept to the Sheriff to do the same, and to return them at the Day appointed by them by their Precept.

H And now it (a) appeareth by those Words in the Register, that in antient Times, upon every Grant, Lease, Release, Confirmation or License to be made by the King, that first a Writ of *Ad quod damnum* was to be awarded, to enquire of the whole Truth and every Circumstance thereof, and what Damage or Prejudice the King should have by the same; and upon such Inquisition certified and returned, to make the Grants, Releases, Confirmations, or Licenses.

But now the Experience is contrary, but in the Patents of Grants of License, they put in the End these Words,

*Et hoc absque aliquo Brevis de Ad quod damnum, seu aliquibus aliis Brevis sive inquisitionibus aut mandatis super inde habend' fiend' aut proseguend', &c.*

But in Patents of Licenses, or in a Patent of Release or Confirmation made by the King, these Words, *absque aliquo Brevis de Ad quod damnum*, are not in those Patents of Releases or Confirmations: But yet by Reason of the antient Course and Form of the Register, it seemeth that the Patents were the better if these Words, *Et hoc absque alio Brevis de Ad quod damnum*, were put into the Patents. *Quere* of the Rigour of the Law, what shall be done in those Cases where the Patents want those Words, &c.

Writ

(a) See 2 E. 3. 6. 16 E. 3. Brief 651. Grants 53. That if a Patent of Liberties be made without Inquiry by *Ad quod damnum*, by Grant whereof the Interests of other Persons are prejudiced; the King is supposed to be deceived, and the Patent shall be repealed in a *Scire facias*.

## Writ of being quit of Toll.

**T**HE Writ to be quit of Toll lieth, where the Citizens or Burges-  
ses of any City or Borough have been quit of (a) Toll throughout  
the Realm by Grants of the King's Progenitors, or by Prescription; then  
if the said Citizens, or any Man of the said Cities or Boroughs, come  
with their Merchandises unto any Fair or Market, and there sell them,  
or buy any Merchandise, if the King's Officer will demand Toll of them  
against the King's Charter, or against the Usage or Custom, then they  
may sue forth and have such Writ: *Viz.*

[227.]

(b) *Rex Ballivis suis de I. salut'. Cum per Chart' nostram concesserimus Burgens. Vill nostræ de S. quod ipsi & eorum hæred' ac success. Burgens. ejusdem Ville, imperpetuum sint quiet' de Toloneo per totum regnum nostrum & potestatem nostram; vobis præcipimus, quod ipsos Burgenses de Toloneo vobis in villa nostra præd' præstando quietos esse permittatis, juxta tenorem chartæ nostræ prædictæ ipsos contra tenorem ejusdem non molestant' in aliquo seu gravantes. Teste, &c.*

And upon that he may have an *Alias*, a *Pluries*, and Attachment *A*  
against the Bailiffs, or those that do grieve him against the Form of the  
Charter: And the *Pluries* is returnable in the King's Bench, or in the  
Common Pleas, at the Will of him who would have it. And in  
that Writ shall be the Clause, *Vel causam nobis significes.*

And if the Grant to be quit of Toll be of the Grant of the King's  
Progenitors; then the Form of the Writ is such:

*Rex Ballivis I. de E. salutem. Cum inter cæteras libertat' Burgensibus*  
(c) *ville nostræ de C. per Chartas progenitorum nostrorum quondam Regum*  
Angl'

(a) See 30 E. 3. 15. where is a Writ  
against the King's Bailiffs, and common  
Farmers in taking Toll, &c. For taking  
and detaining of Goods, &c. contrary to  
the Law and Custom of the Realm, to the  
Wrong and Despight of the King, and  
Prejudice of his Farm, and to the Da-  
mage of the Plaintiff.

*Note*; The Prescription ought to be in  
the Affirmative, *viz.* to be quit of Toll,  
and not that he had not paid Toll. 14 H.  
6. 12.

(b) Toll-traverse lies in Prescription,  
but not Toll-through; for it is an Oppres-  
sion of the People. 22 Aff. 58. yet see a  
common Person may prescribe for Toll-  
through, if he shews a reasonable Cause,  
and prove that the Country has a Recom-  
pence. 14 E. 3. Bar. 275. 5 H. 7. 10. and  
so the King may prescribe for 'Toll-thro';  
*Quare*, if without shewing Cause. 11 H. 6.  
39. *vide infra.*

(c) *Note*; Toll-traverse may be by Pre-  
scription or Grant; but Toll-through can-  
not be by either Grant or Prescription.  
22 Aff. 58. 20 E. 3. Toll 3. *Note*; Toll-  
through is in the Highway, but Toll-tra-  
verse is for passing over another's Land;  
yet it seems if a Highway be in a City or  
Town, Toll-through may be there by Pre-  
scription. 5 H. 7. 10. 13 H. 4. 15. and  
Pontage, Murage or Ferry, may be de-  
manded in a Highway by the King's Grant,  
but not in a private Way. 13 H. 4. 15. and  
see there that the King may grant Tro-  
nage, and good: And note; every new  
Office ought to be proclaimed, as well as  
granted. *Ibid.*

*Note*; If the King grants to one to be  
quit of Toll, this does not extend to Cu-  
stom, as it seems; nor is it any Bar to a  
Demand of Toll, by them who have Toll  
by a prior Grant made to them. 39 E. 3.  
13. See 18 E. 1. Lib. Parl. 10.



Angl' concessas, concessum sit eisdem, quod ipsi & hæredes sui imperpet' sint quieti de Toloneo per totum Regnum nostrum, quas quidem Chartas per Chartam nostram jam confirmavimus, & insuper concessimus eisdem, quod licet ipsi aliqua vel aliquibus Libertatum & Quietantiarum in eisdem Chartis content' hætenus plene usi non fuerint, ipsi tamen, hæred' & successores sui Libertatibus & Quietantiis præd' & earum qualibet de cætero, absque inquietatione vel impedimento, gaudeant & utantur; Vobis præcipimus, &c.

**C** But that last Clause shall not be in the Writ, if the King have not made such Confirmation to them. And upon that he may have an *Alias*, and a *Pluries*, and Attachment, if Need be, against those who take the Toll, &c.

**D** And the like Writ may be for those who ought to be quit of Murage, Pontage, Picage, Lastage, Passage and the like, if they be grieved or disturbed.

And it appeareth in the Register, that King Edward the First did grant unto Merchants, Strangers and Aliens, that they should be quit of Murage, Pannage and Pontage, &c. If they were grieved and disturbed for the same, they should have such Writ, viz.

*Rex Collectoribus muragii, pannagii & pontagii in villa de S. salut'. Cum pro præstationibus & custum' nobis per Mercat' extraneos & alienigenas de bonis & mercimoniis suis infra regnum nostrum adductis, per Chart' celebris memorie Domini Edvardi, quondam Regis Angliæ, avi nostri quam inspeximus, concessum sit eisdem, quod si ipsi salvo & secure in regnum & potestatem nostram veniant cum merchandis suis quibuscunque, de muragio, pannagio & pontagio liberi & quieti, prout in Charta prædict' plenius continet': Vobis mandamus quod B. & socios suos Mercator' de Societat', &c. alienigenas, de muragio, pannagio & pontagio, in Villa prædict' præstand' quietos esse permitt', juxta tenorem Chartæ præd', ipsos cont' tenorem ejusdem non molestantes in aliquo seu gravantes; & Districcionem, si eis ea occasione feceritis, sine dilatione relaxetis eisdem; & si quid ab eis a xx die Augusti, anno, &c. ea occasione levaveritis, id eis sine dilatione resituatis. Teste, &c.*

**E** And if any City or Borough ought to be quit of Toll for the Merchandises which they buy in another Town or Place, if any of them be compelled to pay Toll, all the Corporation may bring the Writ by the Name of their Corporation, and may have an *Alias* and Attachment thereupon, if Need be, with these Words at the End of the Writ, *Et districcionem, si quam eis ea occasione fecerit, &c.* as before.

**F** And the like Writ a Man may have against those who will compel him to pay a certain Sum of Money towards Reparation of any Bridge, of which he ought to be quitted.

And it appeareth by the Register, that spiritual and religious Persons ought to be quit of Toll, Customs, Murage, Pontage and Pannage, and of the like, for their Goods; and if they be troubled to pay the same, they shall have such Writ:

*Rex Ballivis suis de B. salut'. Cum persone Ecclesiasticæ, secundum consuetudinem hæten' in regno nostro usitatam & approbatam (a) ad Toloneum, Pannagium & Muragium de bonis suis Ecclesiasticis alicubi in eodem regn' præstand' nullaten' teneant'; vobis præcipimus, quod R. Personam Ecclesiæ de E. ad Toloneum, Pannagium vel Muragium de bonis suis Ecclesiasticis vobis in Vill' nostra prædict' præstand' non distringatis, contra consuetud' prædict', dum tamen Merchandisas aliquas non exerceat de eisdem, & Distinctionem si quam, &c.*

But Herle Justice said, that these Words *Dum Merchandisas aliquas, &c.* were of no Effect, because, by his Opinion, they are acquit of all Things, altho' they do merchandise: But now the Statute of H. 8. is that they shall not merchandise.

And another Form of Writ for spiritual Persons is in this Form.

[228.] *Cum secundum consuetud', &c. obtentam, persone Ecclesiasticæ ad Toloneum aliquod seu aliam Custumam de bonis suis Ecclesiasticis, vel de aliis pro sustentatione sua emptis, præstare non debeant; vobis præcipimus, quod A. Person', &c. ad Toloneum aliquod vel aliam Custumam de bonis suis Ecclesiasticis venditis, seu de aliis pro sustentat' sua exempt' nullatenus distringatis, contra cons. præd' & Distict', &c. ut supra.*

By which Writs it appeareth how spiritual Persons shall be discharged A of those Tolls, and Impositions, and Exactions for their Goods which they sell or buy for their Sustenance, &c.

Tenants of antient Demesne by the Custom of the Realm ought to be quit of Toll, &c. in every Market, Fair, Town or City throughout the Realm; and upon that every one of them may sue to have Letters Patent under the King's Seal, to all the King's Officers, and to Mayors, Bailiffs, &c. and the Form of the Patent is such:

*Rex universis Ball' & ministris ubicunque infra regnum nostrum Angl' constitutis sal'. Cum secundum cons. &c. (ut supra per totum regnum nostrum) Vobis mandamus, quod homines de manerio nostro de S. si id Maner' de antiquo Dominico Coronæ Angl' sit, ad Toloneum vobis, &c. juxta cons. prædict' & Distiction' si, &c. In cuius, &c. Teste, &c.*

And also the Tenants of antient Demesne may have a Writ directed to the Bailiffs, or Mayor, or others who will compel them to pay Toll, that they suffer them to go quit, &c. and the Form of the Writ is such:

*Rex Ballivis A. de I. salutem. Cum secundum consuetudinem regni nostri hætenus obtentam & approbatam, homines & Tenentes de antiquo Dominico Coronæ Angliæ quieti sint & esse debeant a præstatione Tolonei per totum regnum nostrum, vos nihilominus homines & Tenentes de manerio de S. quod est de antiquo Dominico Coronæ Angliæ, ut dic', ad Toloneum vobis de bon' & rebus suis in eadem Villa præstand' gravit' distringit', & ipsos ea occasione multipliciter inquietatis, minus juste, ad grave dampnum ipsorum hominum*

(a) See Rot. Parl. 8 E. 2. M. 4. super Pension' Decan' & Capituli' Lincoln' esse quiet' de Pannagio. Resp' quod si ipsi vel Famuli sui ju-

vandi studio Mercaturas exercent solvant inde Pannagium prout decet.



*minum & Tenent' & contra conf. prædict', sicut ex querela sua accipimus; & quia eisdem hominibus & Tenentibus injuriari nolumus in hac parte, volis præcipimus, quod si ita est, tunc hujusmodi Distractionibus & inquietationibus eisdem hominibus & tenentibus ea occasione de cætero inferendis desistentes, ipsos de hujusmodi Toloneo vobis de bonis & rebus suis prædict' in eadem Villa præstand' quietos esse permittatis, juxta consuetudinem prædict' & Distractionem, si quam, &c.*

And by the Writ aforesaid it doth appear, that Tenants in antient Demesne shall be quitted of Toll, as well those Tenants who hold of the Manor which is antient Demesne, which is in the Seisin, or the Possession of another Man, than of the King, as the Tenants of antient Demesne, which hold of the Manor in antient Demesne, which is in the King's Hands and Possession.

And it appeareth also that they shall be quit of Toll for their Goods and Chattels which they merchandise with others, as well as for their other Goods; for the Writ is general, *pro bonis & rebus suis*.

**B** And it appeareth that that Writ may be sued by all the Tenants, as a Writ of *Monstraverunt* shall be sued; and also that every particular Person who is grieved may sue forth the Writ if he will.

And also the Lord (a) in antient Demesne himself shall be as well acquitted of Toll throughout the Realm as the Tenants in antient Demesne shall be; and that appeareth by the Register, of an Attachment sued by the Lord of the Manor in antient Demesne against the Bailiffs of C. because they took Toll of him. And they shall not be only quit of Toll, but also of Pontage, Passage and the like.

**C** And also they shall not be contributory to the Expences of the Knights in Parliament; and if the Sheriff will distrain them, or any of them, to be contributory for their Lands in antient Demesne, then they may sue forth a Writ directed to the Sheriff, that he do not compel them to be contributory to the Expences of the Knights, &c. Commanding them in the same Writ, that if they do distrain them, or any of them, that they re-deliver the Distress, &c. And the Writ may be sued by all together, as a *Monstraverunt* shall be directed unto the Sheriff, or by any of them who are distrained.

**D** And Tenants at Will within antient Demesne shall be discharged of Toll, as well as the free Tenants, or Tenants for Term of Life, or for Term of Years of Lands in antient Demesne, shall be discharged of Toll for their Goods, &c. 9 H. 6. 14.

**E** And (b) see 7 H. 4. that a Tenant in antient Demesne may merchandise, buy and sell, and shall not pay Toll: And the same agreeth with

X x x

the

(a) Note; It does not appear by this Writ, what was antient Demesne. See Register 260. accordant, N. B. 2 Lutw. 1145, 1146.

(b) The Case, 7 H. 4. 44. In Trespass against A. *Quod Telonium asportavit, & illud fovere re usavit*, (it was held that the Writ was good, and the first Words as to the

*Asportavit* void): The Plaintiff Counts, that the Defendant had bought twelve Beasts in his Market, and that he came the next Market in the next Week, and sold six of the Beasts (Oxen), and the other six at a Fair there held, at the Feast of, &c. Defendant pleads that he is a Tenant of antient Demesne, &c. and that all those

19 H. 6. 66.  
Newton.

the Register. But *T. 9 H. 6.* it is holden that they shall not pay Toll of Things coming of their Tenements within antient Demesne, nor for Things bought for their Sustenance, &c. but for other Things it is a Question: But forasmuch as they shall be quit of Pontage, Murage, and Passage, I conceive that they shall be quit of Toll generally, although they do merchandise with their Goods. And the Toll ought always to be paid by the Buyer, and not by the Seller: If it be not by some special Custom, &c.

[229.] And the Villains of Lords who come to Parliament shall not be Contributaries to the Expences of the Knights of the Counties who come to the Parliament; but the Lords shall have Letters in their own Names, directed to the Sheriff, commanding him that he do not distrain their Villains to be contributory to those Expences of the Knights, and if he hath distrained them, to deliver the same to the said Villains.

And it seemeth reasonable that the Villain may, if he will, sue the Writ, as well as the Lord, &c. which Writs do appear amongst the Writs to be quit of Toll.

And also Chaplains who are Masters of the Chancery, who are Attendants at Parliaments, shall not be contributory by Reason of their Benefices unto the Expences of Proctors made for the Clergy who come to the Parliament; and if they be, they shall have a Writ to the Archdeacon and his Officers, commanding them for to discharge them, and upon that they may have an *Alias*, and a *Pluries*, and Attachment against them; and the Writ is such:

*Rex Archidiacono Midd' & ejus Offic' ac eorum Commissar' salut'. Cum in Parlamento nostro apud Westmonasterium anno regni nostri quarto convocato, per Nos, & per Prælatos, Comites, Barones, & totum Concilium nostrum, ibidem concord' fuisset, quod Clerici nostri de Cancellar' beneficiati, in Parliamentis, Conciliis & Tractatibus nostris, ad obsequendum nobis & populo regni nostri personaliter existent', ad contribuendum ration' Benefic' suorum expens. Procuratorum de Clero aliquarum Diæc' ad hujusmodi Parliamentæ, Concilia & Tractatus de mandato nostro venientium, dum in eisdem præsentessent, essent quieti: Nos Concordiam prædict' illasam in omnibus, maxime cum expens. prædict' propter absentiam illorum qui dictis Parliamentis, &c. non interfuer', præsent', volentes observari, Vobis mandamus, quod T. Personam Eccles. de N. Lond' Diæc', qui Cleric' de Cancell' nostra est, & qui in Parlamento nostro apud Westmon' ultimo tento in obsequio nostro & communitat' populi regni nostri præsens fuit, ad contribuendum ratione Beneficii sui prædict'.*

those Tenants have been free to buy and sell Beasts for manuring their Lands, &c. without Toll, &c. Time out of Mind, and that he bought *ut supra*, and some he used for manuring his Land, and some he put to Pasture to make Grasles, and after convenient Time sold them, &c. The Plaintiff offers to aver, that he bought the Beasts to re sell them, and that he re sold them *ut supra*; the Defendant demurs; but the Opinion of the Court being

against him, he became Nonsuit: So that it seems, for Things bought for their Sustenance, or manuring their Lands, or concerning Husbandry, they are discharged, but not to merchandise; and the Merchandise of these is different from other Merchandise. See 9 H. 6. 15. and 66. 3 E. 3. (Toll) 138.

See Goods of the Vendor distrained for Toll. 20 E. 3. *Avowry* 129. See 9 H. 6. 45.



*prædict' expens. Procuratorum qui ad dictum Parliamentum pro clero dictæ Diocesi. vener', seu aliorum Procuratorum qui ad alia Parliamenta, &c. per nos nunc tenenda venire conting', dum hujusmodi obsequiis intenderit, nullatenus compellit' seu per ministros vestros aliquant' compelli permit', sed ipsum de expens. hujusmodi quietum esse faciat' juxta Concordiam supradict'; & si quid ab eo ea occasione levatum fuerit, id ei sine dilatione restituat', necnon Processibus, siqui ad Censuras Ecclesiasticas contra ipsum ex causa præd' facti fuerint, supersederi, & sentent', sique in ipsum fulminata fuerit, sine dilatione revocari faciatis. Teste, &c.*

*Quere for that Statute: And by that appeareth, that the Parliament may bind the Clergy by the Acts and Statutes made in Parliament.*

### (a) Writ de Libertatibus allocandis.

**B** THE Writ de Libertatibus allocandis lieth where any Citizen or Burgefs, or other Man, is impleaded before the King's Justices, Justices Errant, or Justices of the Forest, and he claimeth and pleadeth any Grant of Liberty made unto him by the King, or unto any City

X x x 2

or

#### (a) De Libertatibus allocandis.

*Note;* Liberties may be allowed in the Time of the King who granted them, without any Writ of Allowance. See 2 H. 5. 4. 34 H. 6. 54. For Allowance of Liberties, see 14 H. 6. 12.

If the King grants Conufance of Pleas, or to be discharged from serving on Juries, &c. he shall have no Advantage of it, without shewing it in Allowance. 39 E. 3. 15.

#### *What Liberties the King may grant.*

Regularly, he cannot grant such Liberties as are prejudicial to the Subject, without the Assent of Parliament: *Note* the Case of *John Marshall*; viz. The King granted to one *J. S.* the Measuring of Cloths, Canvas, &c. bought and sold in *L.* as well between others, as between Citizen and Citizen, for a certain Sum, &c. *J. S.* dies, the King grants the same Office to *J. M.* and a Writ issued to the Mayor and Sheriffs of *London* to receive him; and at the *Sicut alias* it was returned, that there was not any such Office in the City, &c. and some for the King surmised the Contrary; whereupon a *Pluries* and an Attachment issued, and on the Return, the

Matter aforesaid was shewn to the Court, &c. And it was resolved, (1.) That sofar-much as the said Officer was a Charge to the Subject, for he took certain Fees from the People, (where they had an Aulnager before) That as the first Grant was void, and that what he took was Extortion, and not as an Officer; so on the new Patent to *J. M.* the Mayor might well return that there was not any such Office. *Ratio.* For if the Mayor and Sheriffs could not make such Return, they would be estopped by their Admittance, to say it afterwards, although such Admittance by the Mayor and Sheriffs should not work any Prejudice to another. And so there is a Diversity, when the Office granted by the King has an Interest or Charge, by Reason of the Matter or Thing granted, there they may return the Matter, &c. although it goes in Bar of the King's Title; *contra* if the Officer hath nothing to do with the Matter, but only as Officer, without charging the Subject; and accordingly it was adjudged: And 'twas then said by *Gascoign*, that the King may charge his People, without Assent of the Commons, in a Thing that is for the Good or Profit of the People; as he may grant Pontage, Murage, or a Ferry; But if the King grants Murage to such a Town, where I and my Tenants have Passage through the Town; though some

or Borough whereof he is a Burgeſs, and the Juſtices do delay to allow that Liberty; then he who is ſo delayed by the ſaid Juſtices, may ſue forth ſuch Writ directed to the Juſtices, commanding them to allow the ſame; and the Writ is ſuch:

*Rex Juſticiar' ſuis de Banco ſalutem. Quia Burgenſ. noſtri de N. per Chartas progenitor' noſtror' quondam Regum Angl' clamant habere diverſas Libertates, quibus ipſi & antecellores ſui Burgenſ. ejuſdem villæ a tempore conſeſſionis Chartarum præd' ſemper hætenus uſi ſunt & gaviſi, ſicut dicunt: Vobis mandamus quod ipſos Burgenſ. Libertat' præd' coram vobis in Banco uti & gaudere permittat' juxta tenorem Chartar' præd' prout eis uti & gaudere debent, ipſique & antecellores ſui præd' Libertat' illis a tempore præd' ſemper hætenus rationabiliter uti & gaudere conſueverunt. Teſte, &c.*

And if any do claim a ſpecial Liberty to be impleaded within the City or Borough, and not out of the City, then the Writ ſhall be ſpecial, thus:

*Rex eiſdem, &c. ſalutem. Cum inter cæteras Libertates quæ ad meliorationem Villæ noſtræ de R. per Chartas progenitor' noſtrorum quondam Regum Angl' conceſſæ ſint Burgenſibus ejuſdem Villæ, conceſſum ſit eiſdem, quod ipſi non implacitent ſeu implacitentur alibi quam infra Burgum præd' coram, &c. ejuſdem Vill' de aliquibus tenur' intrinſecis, ſeu tranſgr' & contractibus infra eund' Burgum factis, prout in Chartis præd' plenius continet', qua quidem Libertate iidem Burgenſes & antecellores ſui ejuſdem Villæ Burgenſ. a tempore conſeſſ' Chartar' præd' ſemper hæten' rationabiliter uſi ſunt, ſicut dicunt: Vobis mandamus quod eoſdem Burgenſes Libertate præd' coram Vobis uti & gaudere permittat' juxta tenor' Chartar' præd' prout ipſi eis uti debent, ipſique & antecellor' ſui præd' a tempore præd' ſemper hætenus uti & gaudere conſuever. Teſte, &c.*

[230.] And every one who claimeth any Liberty, and juſtifieth by the ſame any Act done by him in any Court before any Manner of Juſtice or Juſtices, and the Juſtices will not allow that Liberty, or delay to allow the ſame, then he may ſue forth that Writ. And thoſe Writs are of ſeveral Forms, as appeareth by the Register, and may be ſued by a Body Corporate, or by any ſingle Perſon, as the Caſe ſhall happen, &c. And the Barons of the Cinque Ports may ſue forth ſuch Writs, if they be delayed to have their Liberties allowed unto them.

And the like Writ may be ſued to the Juſtices of the Foreſt, commanding them to allow Charters granted to any Perſons, to have Paſture, or to be quit of Pannage there.

ſome of my Tenants pay the Cuſtom, yet I may forbid the Extorting of it. 12 H. 4. 87. 13 H. 4. 14, 15. See the Office of Broage, not grantable by the King. 21 E. 4. 79. Rot. Parl. 13 H. 4. M. 43.

As to the King's Grant of Tolls, &c. vide ante 227. And note; Every new Office ought to be proclaimed as well as granted. 13 H. 4. 15. If the King grants

to one to be quit of Eſcapes, this cannot be intended voluntary Eſcapes. 3 H. 7.—The King cannot by his Patent diſcharge one who is bound by Preſcription, to make or repair a Bridge; but of Contribution to a Bridge he may diſcharge, *ut videtur. Quære* 3 E. 3. Aff. 445. but he may diſcharge a Fine for it. 37 H. 6. 4.



## *Writ de Corrodio habendo.*

**A** **T**HE Writ *de Corrodio habendo* lieth where the King is the Founder in the Right of his Crown of any Abbey, (a) or Priory, or other Religious House. Now of common Right the King ought to have a Corrody, and a reasonable Allowance for any of his Vadelets in the same House. And so of every Bishoprick in *England* and *Wales*, the King ought to have a reasonable Pension for his Chaplain, until the (b) Bishop have promoted him to a convenient Benefice. And the Form of the Writ for the Corrody is such: 10 H. 4. 6.

1 E. 4. 10.  
So every  
common  
Person, if he  
be Founder,  
and doth  
not give in  
Frankal-  
moigne: 44  
E. 3. 24 &  
50. Aff. 6.  
Br. collectis,

Vide 21 E. 4. 8. That the King writ for his Vadelet by his Prerogative, by which that a Founder, common Person, shall not have a Corrody.

14 H. 6. 11. If the King found a Frank-Chapel, he shall not have a Corrody, nor Pension.

*Rex dilectis suis in Christo Priori & conventui de N. salut'. Volentes dilecto vadelicto nostro de S. sibi de sustentatione congrua provideri, ipsum ad vos duximus transmittend' rogantes quatenus ipsum S. in Domum vestram præd' admittentes, ei talem sustentationem in omnib' qualem P. jam defunct' habuit dum vixit in eadem ministrari, & ei Literas vestras communi Sigill' Domus vestræ signatas, mentionem de hiis quæ de eadem Domo vestra sic percipiet facientes, sibi super hoc fieri & ei liberari fac', pro quo nobis in agend' Domui vestræ prædict' tener' volumus special' in futuro; & quid inde ad hunc rogatum nostrum duxeritis faciend' nobis rescribat' per præsent' portatorem, Teste, &c.*

1 E. 4. 10.  
the Writ  
ought to  
contain the  
King's Title  
to the Cor-  
rody.

There is another Form of Writ, where the King will write for the Servants of his Grandfather or Father thus:

*Rex eisdem, &c. salutem. Attend' grata & laudabilia obsequia quæ dilect' serviens noster A. avo nostro & nobis hætenus impend', volentes eidem A. cui de sustentat' sua per ipsos avum seu patrem nostrum aut nos nond' est provisum, de hujusmodi sustentatione providere, ut tenemur, ipsum ad vos duximus destinand', rogantes quaten' ipsum A. in Domum vestram prædict' admitt' ei talem sustent', & in victu & vestitu & al' necessariis qual' R. jam defunct' habuit, ad mand' dicti avi nostri de dict' Domo vestra percipiend' ministretis, sibi que Literas vestras patent', &c. (ut supra.)*

And

(a) It seems, if the King founds an Abbey to hold of an Honour, he shall not have a Corrody. *Quere* 24 E. 3. 72.

(b) This is due from every Bishop of common Right, and cannot be discharged by Prescription. 9 E. 4. 40. c. There the Bishop of St. David's was charged, that he had alledged, (1.) That it was of the Foundation of the Prince of *Wales*, and that the Avoidance belonged to the Principality; whereto 'twas answered, that before the Conquest, that Principality was

held of the King, as of his Crown; and by Forfeiture of the Prince of *Wales*, became re-annexed to the Crown, with all Patronages of the Bishoprick. (2.) That although the Principality was given to the Prince, yet for that the Bishop had sued the Temporalties out of the Kings hands in Chancery, he was chargeable to the King. 10 H. 4. 6

See a Corrody for a Feme in the Priory of *Bermonsey*. Lib. Parl. E. 1. 193.

Note; If an Abbey which a common Person hath cometh to the King by Elcheat; yet he shall not have a Corrody, because it is not of his Foundation. L. 5 E. 5. 10 S. Br. Corrod. 1. 6. Yet the King may have a Corrody where he is not Founder, but that is by special Grant. 1 E. 4. 10.

38 E. 3. Br. Contemp. 5. and 39 H. 6. 48. If the Abbot will not admit the King's Vadelet, he who ought to be admitted shall recover Damages, and not the King, for that the King hath only the Presentation to the Corrody, and the Party the Damages.

44 E. 3. 25. per Knevit, if the King and another give Land to erect, &c. the King is Founder.

And so where the King is Founder of any C Abbey or Priory of Nuns, the King shall have a Corrody for the Queen's Maidens, or others of her Cousins, for whom he pleaseth for to write, &c. But if the King will write unto an Abbey of Monks, for a Maiden to have a Corrody there for her Sustenance, &c. It seems the same shall not be obeyed, for the Inconveniency thereof; nor contrary, if he write to a Nunnery for his Vadelet, to have a Corrody there: *Tamen Quare.*

There is another Form of Writ thus:

*Rex dilectis & fidelibus suis Abbati & Conventui de B. salutem. Volentes de gratia nostra speciali dilecto Vadelecto nostro R. pretextu boni servitii sui nobis impensi & impend' cui de sustentat' congrua, &c. (ut supra.)* D

(a) And upon these Writs, if the Abbot or Prior will not do E according as he is directed to do by the Writ, an *Alias* and a *Pluries* shall be awarded, *vel causam nobis significes* shall be in the Writ of *Pluries*, and shall be returned unto the King's Bench; and if he do not return the same, an Attachment shall be awarded against the Abbot, Prior, or Priorefs.

And if the King write for such Corrody unto an Abbey or Priory, and they grant Parcel of the Corrody unto him for whom the King

22 E. 4. 17, 18, 19. *Hussey* and *Fairfax*. If an Abbot grant to A. to have a Corrody, *nihil operatur* by the Grant: But if he grant a Corrody, or so much Bread and Ale, &c. it is a good Grant of those Things, but it is no Corrody, but a Profit; for every Corrody hath his Beginning by the Founder'ship.

writeth, but not all, nor so much as others had before; then the King, upon a Surmise thereof made in the Chancery, shall grant a Writ of *Sicut alias*, directed unto the said Abbot or Prior, &c. desiring them that they grant the like Livelihood in all Things as any other hath had before in the same House. And if the Abbot or Prior upon the *Pluries* return any Matter of Excuse, wherefore he ought not to grant such Corrody, which

Return seemeth unto the Court where the Return is made, be it in the Chancery or in the King's Bench, to be no sufficient Return, then the King shall grant such Writ:

*Rex, &c. salut'. Cum nuper volentes dilecto nobis N. pretextu diutini servic' sui Dcm' Ed' nuper Reg' avo nostro & nobis hacten' impens. de sustentat' congrua providere, ipsum ad vos miserimus, & vobis plur' mandaver'*

(a) If the Abbot returns Cause at the *Sicut Alias*, and none comes on the King's Part to counterplead the Cause, the Abbot shall be discharged. 11 H. 4. 81. But if any comes for the King, and counterpleads the Cause, they shall not interplead thereon, but a *Pluries* and an Attachment shall issue, and on the Attachment they shall plead by *Guiseign*. 11 H. 4. 87. Note; It

was *Venire coram Concilio*, and there the Title of the Patronage was in Issue, and found for the King; and adjudged, that the King should recover the Patronage, and the Temporalities be seised, for that they elected the Prior without the King's Leave, &c. 35 Aff. 22. *Vide Post* 31. B.



*ver' rogantes quatenus eund' N. in Domum vestram admitteretis, & ei talem sustentation', &c. concederetis, & Literas, &c. faceret', vel causam nobis significaretis, quare mandat' nostris toties vobis inde direct' minime paruistis; ac vos quasd' causas excusat' nobis in Canc' nostram miseritis quas insufficient' reputavim': Vobis igitur mandamus firmiter injungentes, quatenus eund' N. in domum vestram, &c.*

**F** And if an Abbot or Prior at the King's Request do grant a Corrody to *B.* for Life, and afterwards *B.* will surrender the Grant of his Corrody unto the Abbot or Prior, to the Intent that *C.* have the same for his Life, then he ought for to sue a Writ to the Abbot or Prior thus:

*Rex dilectis sibi, &c. Priori & Conventui de R. salutem. Cum dilectus nobis S. quandam certam sustentationem in Prioratu vestro predict' ad rogatum nostrum obtinet, & in voluntat' existat, quod dilect' Vadelictus noster N. habet totum statum quem idem S. habet in sustentatione predict', & ad illum effectum S. Literas patentes sibi de dicta sustentatione per vos factas vobis restituere sit paratus, sicut dicit, supplicans nobis ut assensum nostrum ad hoc præbere dignemur: Nos supplicationi illius S. annuentes, & insuper volentes præf. N. gratiam uberiores facere in hac parte, Vobis mandamus rogantes, quod si idem S. dictas Literas ad effectum predict' restituere voluerit, tunc receptis penes vos Literis illis, ipsum N. in Domum vestram predict' admitte-  
ntes, ei sustentat' predict' ad totam vitam ipsius N. de dicta Domo vestra percipiend' concedat', eique Literas vestras patentes ad eandem sustent' sub sigill' Domus vestre predict' fieri & ei deliberari fac'; & quod ad hunc rogatum nostrum duxeritis faciend' nobis rescribat' per præsent' portatorem. Teste, &c.*

19 E. 3.  
Fines 50. A  
Fine was  
levied of a  
Corrody.  
10 Aff. 11.  
Br. Corro-

*dia S. nuper oblit of a Corrody, and dec' de libero tenem', quod vide 14 H. 6. 11. and 12. Affise lieth of a Corrody, contrary of a Pension.*

**A** And upon that he shall have an *Alias* and a *Pluries*, and Attachment, if Need be.

**B** And if an Abbot or a Prior admit one to a Corrody, upon the King's Writ sent him, if he dieth who is so admitted, the King may write for another to have the same Corrody.

14 H. 6. 11.  
12.

But if the King have a Pension in any Abbey or Priory for his Chaplain, if the Abbot or Prior upon the King's Letter grant a Pension to his Chaplain, and the Chaplain dieth, the King cannot write for, or grant a new Pension unto another Chaplain during the said King's Life; and if he do, the Prior is not bound to grant the same; but it is otherwise of a Corrody.

14 H. 6. 11.  
and 12.

And yet some say, that upon the Cession of an Abbot or Prior, the King shall have a new Pension granted to his Chaplain; but *Quære* of that.

14 H. 6. 12.

**C** And if the King have a Corrody in an Abbey or Priory to have certain Bread, and certain Gallons of Beer, &c. the King may grant the same to several Men; but where he hath a Corrody to have Livelihood of one Man, to sit with the Servants of the Abbot, there he cannot grant.

8 E. 4. 17. ac;  
14 H. 6.  
11 and 12.  
8 H. 7. 12.

24 E. 3. 33. grant the same but to one Man only. And the King may release to the D  
 15 E. 3. and Abbot or Prior, his Title to the Corrody, if he will.  
 14 E. 3. and (a) And if the Abbot or Prior do receive one to a Corrody upon the E  
 24 E. 3. 33. King's Letter, and thereupon doth make him a Grant thereof; thereby  
 14 E. 3. Cor- the Abbot or Prior and their Successors shall be bound for ever. Other-  
 rody 7. and 4. wise it seemeth if the Abbot had granted the same upon the King's  
 Corrod. 4. Request.  
 and 5. Co. Lit. 97. a. And T. 4 E. 3. it is holden, that the Abbot or Prior who holdeth of F  
 50 Aff. 6. 44 the King in *Frankalmoigne* shall not be chargeable with any Corrody.  
 E 3. 24. ac.

## Writ de Annua Pensione.

AND when the King hath a yearly Pension out of an Abbey or G  
 Priory for his Chaplain, the King shall send his Writ unto the  
 Abbot or Prior, &c. to grant the said Pension to his Chaplain; and the  
 Writ shall be such:

*Rex dilectis in Christo Abbati & Convent' de C. salut'. Cum vos ratione  
 creationis vestre pref. Abbat' teneamini uni de Clericis nostris, quem vobis  
 duxerimus nominand', in quadam Annua Pensione de Domo vestra percipiend',  
 quousq' sibi provisum sit de Beneficio Ecclesiastico competenti; ac nos promotio-  
 nem dilecti Clerici nostri A. a suis exigent' meritis affectantes, ipsum ad  
 hujusmodi Pensionem a vobis percipiend' duxerimus nominand'; Vobis igitur  
 mandamus, quatenus eidem A. talem Pensionem de dicta Domo vestra in forma  
 predict' percipiend', que dantes deceat, percipientemque fortius obligatum  
 reddere debeat, concedatis, Literas vestras dat' sigill' Capituli vestri signat'  
 eidem A. super hoc fieri facient'. Et quod inde duxer' faciend', nobis sine  
 dilat' rescribat'. Teste, &c.*

And the Form of the Grant of the Pension is such:

H

*Universis ad quos presentes Literæ pervenerint, Abbas de T. & Conventus  
 ejusdem loci salut', &c. Noveritis nos, ad instantiam Illustrissimi Principis  
 Ed' Dei gratia Reg' Angl', dedisse & concessisse dilecto nobis in Christo A.  
 Clerico centum solidos sterlingorum in Festo S. Mich' annuatim de Camera  
 nostra percipiend', quousque eidem A. de Beneficio Ecclesiastico competenti sibi  
 per nos fuerit provisum, & hoc ei quam citius facultas se obtulerit facer' pro-  
 mittimus, Dict' autem A. per se, vel suum Procur' legit' ad hoc constitut',  
 dictas v. l. singulis annis apud S. recipiat. In cujus, &c. commun' sigill' Do-  
 mus nostre duximus apponend'. Dat' in Capitulo nostro, &c.*

And it appeareth by an antient Roll in the Exchequer, of what Ab-  
 bies or Priories the King ought to have a Corrody and Pension, and of  
 what a Pension only, and of what a Corrody only; the Copy of which  
 followeth:

2

(a) See 18 E. 3. 2. In *Libera Capella Regis*, altho' the King had before translated it  
 to the Priory and Convent. 14 H. 6. 12. for the Priory of St. Bartholomew.



*The Names of the Corrodies and Pensions in England  
which are of the King's Gift, according to the Book  
in the Exchequer.*

<b>I</b> N the Abbey of <i>Glaffenbury</i> ,	In the Abbey of <i>Notley</i> ,	1 C.
1 C. 1 P.	In the Abbey of <i>Southampt.</i>	1 C.
In the Abbey of <i>Mochelny</i> , 2 C. 1 P.		1 P.
In the Abbey of <i>Tewksbury</i> ,	In the Abbey of <i>Lilfil</i> ,	1 C.
1 C. 1 P.	In the Abbey of <i>Sbrewsbury</i> ,	1 C.
In the Abbey of <i>Clive</i> ,		1 P.
1 C. 1 P.	In the Abbey of <i>Chester</i> ,	1 C. 1 P.
In the Abbey of <i>Ford</i> ,		1 C.
1 C.	In the Abbey of <i>Vale-Roial</i> ,	1 C.
In the Abbey of <i>Buckfast</i> ,	1 C. 1 P.	
In the Abbey of <i>Sherburn</i> ,	1 C. 1 P.	
1 C. 1 P.	In the Abbey of <i>Burton</i> ,	1 C. 1 P.
In the Abbey of <i>Abbatsbury</i> ,	1 C. 1 P.	
1 P.	In the Abbey of <i>Thorney</i> ,	1 C. 1 P.
In the Abbey of <i>Bewdley</i> ,	1 C. 1 P.	
In the Abbey of <i>Shaftsbury</i> ,	1 P.	
In the Abbey of <i>Winton</i> ,	1 C. 1 P.	
1 C. 1 P.	In the Abbey of <i>Ramsay</i> ,	1 C. 1 P.
In the Abbey of <i>Worwel</i> ,	1 P.	
1 P.	In the Abbey of <i>Peterborough</i> ,	1 C.
In the Abbey of <i>Hide</i> ,	1 C. 1 P.	
In the Abbey of <i>Battel</i> ,	1 C. 1 P.	
1 C. 1 P.	In the Abbey of <i>Crowland</i> ,	1 C. 1 P.
In the Abbey of <i>Waverly</i> ,	1 C.	
1 C.	In the Abbey of <i>St. Benedict</i> in	
In the Abbey of <i>Malmsbury</i> , 2 C. 1 P.	<i>Norfolk</i> ,	1 C. 1 P.
In the Abbey of <i>Sleeburn</i> ,	1 C. 1 P.	
1 P.	In the Abbey of <i>Bury</i> ,	1 C. 1 P.
In the Abbey of <i>Southwick</i> ,	1 C. 1 P.	
1 C. 1 P.	In the Abbey of <i>Tetfurther</i> ,	1 C. 1 P.
In the Abbey of <i>Susester</i> , 2 C. 1 P.	In the Abbey of <i>Pipwel</i> ,	1 C. 1 P.
In the Abbey of <i>Stonley</i> ,	1 C.	
1 C.	In the Abbey of <i>Leicest.</i>	1 C.
In the Abbey of <i>Bristokom</i> ,	1 P.	
1 P.	In the Abbey of <i>Newsted</i> ,	1 C.
In the Abbey of <i>Hurtey</i> ,	1 C.	
1 C.	In the Abbey of <i>Pamfret</i> ,	1 C. 1 P.
In the Abbey of <i>Reading</i> ,	1 C. 1 P.	
1 C. 1 P.	In the Abbey of <i>Worstore</i> ,	1 C.
In the Abbey of <i>Messenden</i> ,	1 C.	
1 C.	In the Abbey of <i>Blith</i> ,	1 C.
In the Abbey of <i>Glocester</i> , 2 C. 1 P.	In the Abbey of <i>Waltham</i> , 2 C. 1 P.	
In the Abbey of <i>Langton</i> ,	1 C.	
1 P.	In the Abbey of <i>Barking</i> ,	1 C.
In the Abbey of <i>Perfbore</i> ,	1 C. 1 P.	
1 C. 1 P.	In the Abbey of <i>Tower-hill</i> ,	1 C.
In the Abbey of <i>Winchcomb</i> ,	1 C.	
1 C.	In the Abbey of <i>Bermondsey</i> ,	1 C.
1 P.	In the Abbey of <i>Christchurchland</i> ,	
	1 C. 1 P.	
In the Abbey of <i>Osney</i> ,	1 C. 1 P.	
In the Abbey of <i>Tame</i> ,	1 C.	
1 C.	In the Abbey of <i>Feverfham</i> ,	1 C.
In the Abbey of <i>Dorcester</i> ,	1 C.	
1 C.	In the Abbey of <i>Chirsey</i> ,	1 C.
1 P.	In the Abbey of <i>St. Mary</i> in <i>Tork</i> ,	
In the Abbey of <i>Abingdon</i> , 2 C.	1 C.	
2 C.	In the Abbey of <i>Durham</i> ,	1 C. 1 P.
1 P.	In the Abbey of <i>Tinmouth</i> ,	1 P.
In the Abbey of <i>Evesham</i> ,	1 P.	
1 C.	In the Abbey of <i>Withy</i> ,	1 C. 1 P.
1 P.	In the Abbey of <i>Mewes</i> ,	1 C.
In the Abbey of <i>Godstow</i> ,	1 P.	
1 P.	In the Abbey of <i>Altney</i> ,	1 C. 1 P.
	In the Abbey of <i>Warden</i> ,	1 C.
	Y y y	In

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In the Abbey of <i>Crislon</i> ,	1 C.	In the Priory of <i>Bradflow</i> ,	1 P.
In the Abbey of <i>Selby</i> ,	1 C.	In the Priory of <i>Worcester</i> ,	1 C.
In the Abbey of <i>Sparball</i> ,	1 C.	In the Priory of <i>Sedsworth</i> ,	1 C.
In the Abbey of <i>Dorfley</i> ,	1 C.		1 P.
In the Abbey of <i>Spalding</i> ,	1 C.	In the Priory of <i>Dunstable</i> ,	1 C.
In the Abbey of <i>St. Augustine</i> in			1 P.
<i>Canterbury</i> ,	1 C.	In the Priory of <i>Royston</i> ,	1 C.
In the Abbey of <i>Thornton</i> ,	1 C.	In the Abbey of <i>Kennekworth</i> ,	1 C.
In the Abbey of <i>Twierdart</i> ,	1 C.		1 P.
In the Abbey of <i>Novexon</i> ,	1 P.	In the Priory of <i>Coventry</i> ,	1 C.
In the Abbey of <i>Cotesball</i> ,	1 C.	In the Priory of <i>Tutbury</i> ,	1 C.
In the Abbey of <i>Monmouth</i> ,	1 C.	In the Priory of <i>Ely</i> ,	1 C.
In the Abbey of <i>Westminster</i> ,	1 P.	In the Priory of <i>Bedwell</i> ,	1 C.
In the Abbey of <i>St. Saviour's</i> in		In the Priory of <i>Norwich</i> ,	1 C. 1 P.
<i>Canterbury</i> ,	1 C.	In the Priory of <i>Lenton</i> ,	1 P.
In the Abbey of <i>Daventry</i> ,	1 C.	In the Priory of <i>Sesword</i> ,	1 C.
In the Abbey of <i>Cristall</i> ,	1 C.	In the Priory of <i>Merton</i> ,	1 C. 1 P.
In the Abbey of <i>Stratford</i> ,	1 C.	In the Priory of <i>Lewes</i> ,	1 C.
In the Abbey of <i>Milton</i> ,	2 C.	In the Priory of <i>Wenlock</i> ,	1 C.
In the Abbey of <i>Serne</i> ,	1 C.	In the Priory of <i>Winchester</i> ,	1 C.
In the Abbey of <i>Combe</i> ,	1 C.		1 P.
In the Abbey of <i>Grenuby</i> ,	1 P.	In the Priory of <i>Bordfly</i> ,	1 C.
In the Abbey of <i>Merival</i> ,	1 C.	In the Priory of <i>Standeate</i> ,	1 C.
In the Priory of <i>Bath</i> ,	1 C.	In the Priory of <i>St. Andrews</i> in	
In the Priory of <i>Montagu</i> ,	1 C.	<i>Northampton</i> ,	1 C. 1 P.
In the Priory of <i>Tavestock</i> ,	1 C.	In the Abbey of <i>Bodmyn</i> in <i>Corn-</i>	
In the Priory of <i>St. Augustin</i> in		<i>wall</i> ,	1 C.
<i>Bristol</i> ,	2 C.	In the Abbey of <i>St. James's</i> in	
In the Priory of <i>Almsbury</i> ,	1 C.	<i>Northampton</i> ,	1 C. 1 P.
In the Priory of <i>Stethorne</i> ,	1 C.		

## Writ de Idiota inquirendo &amp; examinando.

Vide 256. D. **N**OTE, That the King by the Law, of Right, is for to defend his Subjects, their Goods and Chattels, Lands and Tenements; and therefore in the Law every loyal Subject is taken into the King's Protection; and if he be put out of the King's Protection for his Offence, then every Man may do to him as against the King's Enemy, and he hath no Remedy for the same by the King's Laws. (a) And because that every Man is within the King's Protection, an Idiot, who cannot defend

(a) Note; If only a Right of Entry or Action descends to an Idiot, the King shall not have the Custody thereof. 1 H. 7. 24. 29 E. 3. 43. Also the Copyhold of an Idiot is not within the Ordering of the Court of

Wards, but the Court of the Manor. Dyer 302.

Note; The King has the Custody of an Idiot to his own Use, not so of a Lunatic; therefore his Committee shall not have Aid of the King. Dyer 25.



defend or govern himself, nor order his Lands, Tenements, Goods, nor Chattels; the King of Right ought for to have him in his Custody, and to rule him and his Lands and Tenements, Goods and Chattels; and that appeareth by the Statute of *Prærogativa Regis*, cap. 8.

**B** And therefore when the King is informed, that one who hath Lands or Tenements is an Idiot, and is a Natural from his Birth, the King may award his Writ to the Escheator of the County where such Idiot is, or unto the Sheriff, to enquire thereof; and the Writ which shall be directed to the Escheator shall be such:

Straundf. 34.  
18 E. 3.  
Sci. fac. 10.

*Rex Eschaetori suo, &c. salutem. Quia accepimus quod I. de B. Fatuus & Idiota existit, ita quod regimini sui ipsius, terrarum, tenementorum, bonorum & catallorum suorum non sufficit, & quod ipse in fatuitate sua magnam partem terrar' & tenement' suorum alienavit, & etiam magnam partem bonorum & catallorum suorum dissipavit, in exhered' suam, & nostri præjudic' manifestum: Nos indemnitati ipsius I. in hac parte prospicere volentes, vobis mandamus, quod ad ipsum I. in propria persona vestra accedatis, & ipsum viis & modis quibus super statu suo melius poteritis informari circumspicte examinietis, & nihilominus per sacramentum proborum & legalium hominum de Ball' vestra, per quos rei veritas melius sciri poterit, diligenter inquiret', si idem I. Fatuus & Idiota sit, sicut præd' est, necne: Et si sit, tunc utrum a nativitate sua, an ab alio tempore; & si ab alio tempore, tunc a quo tempore, & qualiter, & quomodo; & si lucid' gaudeat intervallis; & si id' I. in eod' statu existens terras aut tenementa aliqua alienavit, necne; & si sic, tunc quas terras & quæ tenement', & ubi, & (a) cui vel quibus, & in cujus vel in quor' manib' ter' & tenementa sic alienat' existunt, & qualiter, & quomodo, & quæ terr' & quæ tenementa sic adhuc remanent, & de quo vel de quibus tam terr' & tenem' sic alien', quam terr' & tenementa sibi retenta, teneant', & per quod servic', & qualiter, & quomodo, & quantum valeant per ann' in omnibus exitibus, & quis propinquior hæc ejus sit, & cujus ætatis. Et inquisic' inde distinte & aperte fact' nobis in Canc' nostram sub sigillo vestro & sigillis eorum per quas, &c. mittat', & hoc breve. Teste, &c.*

[233.]

**A** And there are two other Manners of Writs of another Form in the Register, which are directed unto the Escheator, to go to such Idiot, and to examine him, and to enquire thereupon. And the Form of the Writ which is directed unto the Sheriff for to enquire of an Idiot is such:

*Rex Vic', &c. Præcip' tibi, quod per sacram', &c. diligent' inquiras utrum I. de B. frat' & hæres T. de B. a natavit' suæ tempore semper hæteamus purus Idiota extiterit, per quod custodia terrar' & tenementorum suorum in C. ad nos debeat pertinere, an per Infortunium vel alio modo in hujusm' infirmitat. postea inciderit, propter quod hujusmodi custod' ad nos pertinere non debeat; & si per Infortunium vel alio modo, tunc per quod infortunium, & quali, & quo modo, & cujus ætatis fuerit, & de quo terræ & tenementa immediate tenent', & per quod servic', & quis modo ea teneat, & quantum valeant per ann' in omnibus exit', & quis medio tempore exit' eorum percepit, & inquisic' inde distinte & aperte, &c.*

Y y y 2

And

(a) And a Scire Facias shall issue against them. 18 E. 3. Scire Facias 10. 32 E. 3. *ibid.* 106.

And there is a Form of Writ directed to the Sheriff, for to enquire of Idiots, which is much of the like Form as the first Writ above is ; and it is directed to the Escheator to make the Enquiry.

And although a Man be found Idiot by Inquisition taken before the Escheator, or before the Sheriff, and by their Examination, &c. and that be returned into the Chancery ; yet he who is so found Idiot may in Person, or by his Friends, come into the Chancery before the Chancellor and the King's Council, and shew the Matter, and pray that he may be examined before the Chancellor and the King's Council, whether he be Idiot or not ; or he may sue forth a Writ out of the Chancery to certain Persons, to bring him who is so found Idiot before the King and his Council to *Westminster*, to be there examined ; and if he be brought thither and examined, and found to be no Idiot, then the Inquisition found before the Escheator, or Sheriff, and also the Examination which the Sheriff hath made, and returned thereupon, shall be of no Effect, but the same Office shall be taken as void, without any other Traverse, as it seemeth. And the Writ which shall be directed to the Party to bring the Idiot before the King's Council shall be such :

16 E. 3.  
Livery 30.

*Rex I. de T. sal'. Quia datum est nobis intelligi, quod R. frater tuus, filius & hæ'r' B. defuncti patris tui, Idiota est, & non sanæ mentis existit, ita quod regimini sui ipsius aut terrarum suarum providere non sufficit ; Nos, volentes de statu præd' R. fratris tui certiorari, tibi præcipimus, firmiter injungentes, quod statim visis præsent', præd' R. in custodia tua existent', ut dic', coram nobis & Concilio nostro apud Westm' sine dilatione duci fac', ita quod sit ibidem hac instante die Jovis, ibid' coram eod' Concilio nostro examinand', & ad faciend' de eo quod per advisamentum Concilii nostri super hoc duxerimus ordinand'. Et hoc sub pœna centum librarum nullatenus omitas. Teste, &c.*

And he who shall be said to be a Sot and Idiot from his Birth, is **B** such a Person who cannot account or number Twenty-pence, nor can tell who was his Father, or Mother, nor how old he is, &c. so as it may appear that he hath no Understanding of Reason what shall be for his Profit, or what for his Loss : But if he have such Understanding that he know, and understand his Letters, and do read by Teaching or Information of another Man, then it seemeth he is not a Sot, nor a natural Idiot.



## *Writ de Apostata capiend'.*

**C**THE Writ (a) *de Apostata capiend'* lieth where a Man doth enter into Religion, and is professed, and afterwards he leaveth his House, and is Vagrant, and running about the Country, against the Rules of his Order of Religion; then the Abbot or Prior where he is professed may certify the same under his Seal into the Chancery, and pray to have a Writ to the Sheriff to apprehend him, and deliver him to the Abbot or his Attorney; and the Form is such:

*Rex Vic', &c. salut'. Quia frat' I. Canonicus de A. spreto Habitu Ordinis illius, in Habitu seculari de patria in patriam in Balliva tua vagatur & discurret, in animæ suæ periculum & ordinis sui scandalum manifestum, sicut dilecti nobis Abbas de A. nobis significavit per Literas suas patentes: Tibi præcipimus, quod præf. I. ubicunque in Ball' tua inveniri contigerit, sine dilatione arrestes, & præd' Abbati, vel ejus in hac parte Attorn', liberes, secund' Regulam Ordinis præd' castigand'. Teste, &c.*

[234.]

**A** And upon that he may have an *Alias* and *Pluries* against the Sheriff, and an Attachment, if he will not execute the Writ.

**B** There is another Writ of another Form thus:

*Rex eidem, &c. salutem. Quia frat' T. Monachus de S. Ordinis Clunassen', in Ordine illo professus, spreto Habitu Ordinis illius, &c. sicut dilectus nobis in Christo Abbas de B. per Literas suas patent' nobis signific'; Tibi præc', quod præf. &c. ut supra.*

**C** And it seemeth, that although he who departeth from his House or Religion doth not change his Habit, yet if he be Vagrant, &c. and the Abbot of the House do certify the same, he shall have such Writ, notwithstanding these Words in the Writ (*spreto Habitu, &c.*) for those are but Words of Form, and not of Substance; for the Habit of Religion is the Obedience and Profession which he hath made to such Rule, &c. and if he relinquish that Obedience, and the Rules of that Reli-

(a) *Rot. Pat. 2 E. 1. M. 24.* A Patent made for the Procurator of the House of St. Anthony, to come and take up vagrant Friars, & *Si Fratres & procuratores dict' Dom' contingentes & Nomine Fratrum prædictor' animalia & Bona petunt & recipiunt*, and commanding to arrest all such as go about without a Testimonial of the Procurator, and to take such Monies and Goods, and deliver them to the said Procurator; *Et si forsan Literas Regias Datum præsentium præcedentes super Admissione eorum ad hujusmodi Elemosynas colligendas prædicti Procuratores Testimonium legitimum non habentes exhibeant, minime paratis, &c.*

See also 22 E. 3. 2. Trespas by the Prior of these Friars Preachers and A. his Con-

frere for a Battery of the said A. *ad Dampnum prædict' Prioris*, against the Abbot of C. who pleads, that A. was a Co-canon of his House, and that he sued to the King, who commanded that he should take him where he could find him; whereupon he took him, and carried him to Prison. And by Order of Court he was put to confess that he was a *Frere* of the Plaintiff and demur, or else to traverse the Matter alledged; whereupon he pleaded by a Traverse, *absque hoc*, that he was *Frere* of the Plaintiff, and Issue being joined thereon, a Writ went to the Bishop of the Diocese where the Plaintiff was, who certified that he was his *Frere*.

Religion, and departeth, it seemeth that he doth relinquish the Habit: And if that Departure be certified by any Abbot where such Person was remaining, and under his Obedience when he departed and relinquished his Religion, the same is sufficient to have such Writ upon such Certificate; or if it be certified by him who is the Visitor of the religious House, &c. But there are not any Writs in the Register framed upon such Certificate made by any Visitor or Abbot of any other House, upon which the Party who left his Habit was not remaining at the Time, and therefore *Quere* of the same.

*Writ de Leproso amovendo.*

**T**HE Writ de Leproso amovendo lieth where a Man is a Lazar or a D Leper, and is dwelling in any Town, and he will come into the Church, or amongst his Neighbours where they are assembled, to talk with them, to their Annoyance and Disturbance; then he or they may sue forth that Writ for to remove him from their Company; and the Writ is such:

*Rex Vic', vel Majori & Vic' Lond' sal'. Quia accepimus quod I. de N. E leprof. existit, & inter homines Civitatis prædict' communit' conversatur, & cum eis tam in locis publicis quam privatis communicat; & se ad locum solitatum, prout moris est, & ad ipsum pertinet, transferri recusat, ad grave damnum hominum prædict', & propter contagionem morbi prædict' periculum manifest'; Nos hujusmodi periculo, prout ad nos pertinet, præcaver', & super præmiss. quod justum est & usitat' fieri volentes, vobis præcipim', quod assumptis vobiscum aliquibus discretis & legalibus hominib' de Civitat' prædict' non suspect', qui de persona præf. I. de N. & hujusm' morbo notitiam habent meliorem, ad ipsum I. accedatis, & ipsum in præsentia prædict' hominum faciatis diligent' videri & examinari; & si ipsum Leprosum esse inveneritis, ut prædictum est, tunc ipsum honestiori mod' quo poteritis a communicatione prædict' hominum amoveri, & se ad locum solitarium ad habitand' ibid' prout moris est, transferri faciatis indilat', ne per hujusmodi commun' conversationem suam hominibus prædict' dampn' vel periculum eveniat quoquo modo. Teste, &c.*

And upon that he may have an *Alias* and a *Pluries*, and Attachment **F** against the Mayor, or against him to whom the Writ is directed, if he will not execute the Writ.

But it seemeth, if a Man be a Leper or a Lazar, and will keep him- **G** self within his House, and will not converse with his Neighbours, that then he shall not be moved out of his House. But there are divers manners of Lepers; but it seemeth that the Writ is for those Lepers who appear to the Sight of all Men that they are Lepers by their Voice, and their Sores, and the Putrefaction of their Flesh, and by the Smell of them: But for those who are infected with that Disease in their Bodies, and it doth not appear outwardly upon their Bodies, *Quere*, whether such Writ lieth for to remove them.



*Writ De deonerando pro rata portione.*

**H** **T**HE Writ *De deonerando pro rata portione* lieth where a Man holdeth Plow 125. ten Oxgangs of Lands by Fealty, and 20 s. Rent of the King, and the Tenant doth alien one part, or one Oxgang, to one Man, and another Oxgang to another Man in Fee, and so to others the rest of the Oxgangs, and the Sheriff or the King's Officer will distrain one of the said Tenants for the whole Rent; then he who is distrained may sue forth that Writ, which is thus:

*Rex Vic', &c. salutem. Monstraverunt nobis I. A. & W. quod cum quatuor bovati terræ cum pertin' in E. quæ fuer' B. & quæ de nobis tenentur per servitium tresdecim solid' per annum reddendorum per manus Vic' nostri Com' prædict' qui pro tempore fuerit, ad manus prædict' I. A. & W. necnon ad manus T. ex perquisito suo devenerunt; & licet iidem I. A. & W. duas bovati terræ inde tantummodo teneant, tu tamen prædict' tresdecim solid' annuos a præf. I. A. & W. omisso præf. T. qui dictas duas bovatas terræ residuas tenet, exigis, & ipsos I. A. & W. pro prædict' tresdecim solidis annuis nobis reddend' per varias Districciones compellis, in ipsor' I. A. & W. dispendium non modicum & gravamen, super quo nobis supplicaver' eis congruum remedium adhiberi. Et quia eisdem I. A. & W. injuriari nolumus in hac parte, tibi præcipimus, quod si inquisit' super præmiss. faciend' vel alio modo legitimo, tibi constare poterit prædict' quatuor bovati terr' per servitium tresdecim solidorum de nobis tantummodo teneri, & ipsos I. A. & W. duas bovatas terræ inde, & prædict' T. alias duas bovati terræ residuas tenere, ut est dictum, tunc acceptis a præf. I. A. & W. iis quæ ad nos pertinent pro rata portione tenuræ suæ quam inde tenent, ipsos de residuo servit' præd' quietos esse permittas: Proviso semper, quod dict' residuum servitii illius a præf. T. ad opus nostrum leve', ut est justum. Teste, &c.*

**A** And it appeareth by that Writ, that notwithstanding the Statute of *Br. Appar. count 21. Dyer 240. a.* *Quia emptores terrarum*, that if the King's Tenant do alien Part of the Lands held of the King, yet the King or his Minister may distrain one of the Tenants for the whole Rent, &c. although that the Statute saith, *quod feoffatus teneat pro particula illa, &c.* But it seemeth the King is not bound by the Statute, but a common Person is. For if a Man hold 20 Acres of Land by Fealty, and 20 s. Rent of another Man, and he alieneth one Acre to one in Fee, and another Acre to another in Fee, the Lord shall not distrain the Alienee but for the Rate and Value of the Land which he hath purchased, and shall not distrain one Alienee for the whole Rent, &c. But if the King's Tenant doth alien Part of the Lands which he holdeth of the King without Licence, then the King may chuse whether he will take the Alienee for his Tenant, or not; and then it is a Question whether the Alienee shall have such Writ: But if the Alienee doth pay a Fine to the King for the Alienation, it is Reason that he have such Writ as before, if he be distrained for the whole Rent which

29 H. 8. f.  
28. Perkins  
129.

27 H. 8. 26. which issueth out of all the Lands, whereof he hath purchased but Part, &c.

And the like Writ as before is awarded to the Queen's Officers, where they distrain one Tenant for the whole Rent, where he holdeth but Part of the Lands, and several other Tenants hold the Residue thereof.

Br. Appar.

count 21.

Plow. 125. b.

29 H. 8. f. 28.

And if a Man who holdeth 100 Acres of Land, ought by his Tenure thereof to repair such Bridge, if he alien in Fee twenty Acres to one, and twenty Acres to another, and one of them only be distrained to make the Reparations upon a Presentment found; he shall have a special Writ to the King's Officers, that they do not distrain him, but according to the Rate of his Proportion of the Land which he holdeth; and the Writ is such:

*Rex dilectis & fidelibus suis I. de T. & sociis suis Just' nostris ad inquirend' de defectibus magni Pontis Canc', & ad defectus illos reparari & emendari faciend' assignatis, salutem. Ex parte R. nobis gravit' conquerent' est monstratum, quod cum presentat' sit coram vobis, quod idem R. tenet quatuor hid' terr' cum pertin' in D. in Com' predict' quæ de reparatione Pontis predict' ab antiquo onerari consuever': or thus; quæ ad reparation' Pontis predict' teneri afferentur; & licet ipse nisi tantum xx acras terræ de dictis quatuor hid' terræ, & quidam alii totum resid' eorundem quatuor hidar' teneant; vos tamen, occasione' Presentac' predict' septem libras, ad quas dictæ quatuor hidæ terræ pro reparatione Pontis predict' appportionat' sunt, de eodem R. ac si ipse quatuor bidas terr' predict' integre tenuerit, cum non teneat, omissis aliis Tenentibus predict', levar' nitimini, & ipsum ea occasione gravit' distringi & multipliciter inquietari faciatis, in ipsius R. grave dampnum, & status sui depression' manifestam, super quo nobis supplicavit de remedio provider': Et quia ipsum R. in hac parte indebit' volumus onerari, vobis mandamus, quod si per inquisition' inde in present' ipsius R. si interesse voluerit, capiendam, vel alio modo legitimo, vobis constare poterit ipsum R. nisi xx acr' dictar' quatuor bidarum terræ tantummodo tenere, & resid' earund' quatuor bidarum terræ in manibus aliorum Tenentium exister', ut est dictum, tunc dictas septem libras, ad quos dict' quatuor hidæ terræ pro reparatione Pontis predict' sic assessæ sunt, tam de pref. R. quam de aliis tenentibus præd', viz. de quolibet eorund' juxta ratam tenuræ suæ earund' quatuor bidar' terræ, nemini in hac parte parcend', nec aliquem Tenent' earund' ultra ratam tenuræ suæ indebite onerand', levar' fac', Present' præd' non obstante. Et si quid ab eodem R. ultra portionem tenuræ suæ minus juste levatum fuerit, id ei sine dilatione restitui fac'. Teste, &c.*

There is another Form of Writ for the King's Tenant, where he is distrained for all the Rent, where he holdeth but Part of the Lands out of which the Rent ought to be paid; which see in the Register.

Stamf. Prærog. 30.

But look the Statute of 34 Edw. 3. cap. 15. That if the King's Tenant in Capite alieneth his Lands in Fee without License, the Alienation shall not bind the King, but that he shall have his Prerogative of those Lands and Tenements; and therefore Quære the Meaning of that Statute, and what is intended thereby.



## Writ of Superfedeas.

**A** **T**HE Writ of *Superfedeas* lieth in divers Cafes: As if a Man be fued, and a *Capias* or *Exigent* be awarded againft him, he may by his Friend fue forth a *Superfedeas* out of the Place where the *Capias* or *Exigent* was awarded againft him; or out of the Term he may fue forth a *Superfedeas* out of the Chancery directed to the Sheriff, that he take Sureties of him, &c. to appear at the Day, &c. and that he let him at Liberty; or he may find Sureties in the Chancery to appear at the Day of the Return of the *Capias* or *Exigent*; and upon this he fhall have a *Superfedeas* to the Sheriff, that he let him go, if he have arrefted him thereupon; and if he have not arrefted him, that then he do not arreft him, but fuffer him to go in Peace; and the Form of the Writ is fuch: [236.]

*Rex Vic', &c. Cum A. implacitet coram nobis per Breve noſtrum B. & quosdam alios in dicto Brevi noſtro contentos, de quadam transgreſſ. eidem A. per præſat' B. & alios prædict' illata, ut dicitur, ac idem B. pro eo quod non venit coram nobis ad respondend' præſat' A. de transgreſſione prædict' in Exigend' in Com' tuo poſitus ſit ad utlagand', ipſo de Exigend' prædict' penitus ignorante, unde nobis ſupplicavit, ut, cum ipſe paratus ſit ſuper præmiſſ. in omnibus ſtare juri, velimus ei in hac parte ſubvenire: Nos, Supplicationi prædict' quatenus juſtum fuerit annuentes, tibi præcipimus, quod ſi prædict' B. in Com' tuo perſonaliter accedens ſe reddiderit Priſonæ noſtræ, ut eſt moris, tunc Exigend' prædict' Superfedeas; & poſtmod' ſi idem B. invenerit tibi ſufficientes Manucaptores, qui eum manucapient habere coram nobis ad talem diem quo Breve noſtrum de Exigend' prædict' coram nobis eſt retornabile, ad respondendum præſ. A. de transgr' prædict' & ad faciendum ulterius & recipiendum quod Curia noſtra conſiderabit in præmiſſ. tunc præſ. B. a Priſona prædict' (ſi ea occasione, & non alia, detineatur in eadem) interim deliberari fac' per Manucaptionem præd', & habeas ibi nomina Manucapt' præd' & hoc Breve.*

And when he findeth Sureties in the Chancery for to appear at the Day of the Return of the *Exigent*, then he ſhall have a *Superfedeas* of another Form; which ſhall be ſuch:

*Rex Vic', &c. Supplicavit nobis C. quod cum B. implacitet coram nobis per Breve noſtrum præſat' C. & quosdam alios de quadam transgr' eidem B. per præſ. C. & alios prædict' illata, ut dicit', & licet idem C. paratus ſit præſ. B. de transgr' prædict' ſiqua fuerit, respondere, & in omnibus ſtare jur' ſecundum Legem & conſuetudinem regni noſtri Angliæ, ipſe tamen, pro eo quod tu coram nobis retornaſti, quod idem C. non fuit inventus in Ball' tua, juxta Proceſſum inde coram nobis habitum, per te in Exigend' poſitus exiſtit in Com' tuo ad utlagand'; velimus ejus indempnitati in hac parte providere. Nos, pro eo quod W. R. & I. manuceper' coram nobis in Cancell' noſtra habere præſ. C. coram nobis ad diem quo Breve noſtrum de Exigend' verſ. ipſum C. eſt retornabile, ad respond' præſ. B. de transgr' prædict', vel' eid' C. &c. ſi in*  
Z z z
Exigend'

*Exigent' præd' occasione præmiss. & non alia, positus existat, ut est dictum, tunc in Exigent' ill' ulterius faciend' interim Superfedeatis per Manucaption' suprad' ; & habeas ibi tunc hoc Breve. Teste, &c.*

And if the Clerk, who hath the Keeping of the Rolls for the Taking of Statute-Merchants, forge a Bond in the Name of another, and putteth the Mayor's Seal, and a Seal in the Name of the Party, to the same, and makes an Enrolment thereof in the Rolls, and afterwards doth certify the same into the Chancery, for which a *Capias* is awarded against the Party ; then he against whom such Process is sued forth may come into the Chancery, and have a Writ directed unto the Sheriff, relating therein the whole Matter, and reciting that the Party hath upon the Matter sued forth an *Audita querela*, directed to the Justices of the King's Bench, commanding them to call the Parties before them, &c. and commanding the Sheriff, that if the Party who is sued will find sufficient Sureties to the Sheriff, to appear at the Day in the King's Bench, and to pay the Debt, if he be condemned, that then he do surcease to arrest or to trouble him, &c.

And if a Man do cite another by the Pope's Bull personally to appear C at the Court of *Rome*, &c. against the Statutes; now if he who made the Citation be committed to Prison, he may sue in the Chancery to have a special Writ directed unto the Sheriff, rehearsing the Matter, commanding him, that if the Parties will find sufficient Sureties, Body for Body, to appear before the King and his Council at a certain Day, and perform what the Court shall adjudge or be decreed for the King or Council, that then he let him at large: And by that Writ the Sheriff ought to set him at Liberty; and if he will not, he shall have an *Alias* and a *Pluries*, and Attachment against him.

If a Man depart from his Master without sufficient Cause, and another knowing the same, doth retain him, for which the Master bringeth a Writ against him for the retaining of his Servant, upon which a *Capias* is awarded, he may in the Chancery find Sureties to appear in Banco at the Return of the Writ, and have a *Superfedeas* thereupon to the Sheriff, not to arrest him; and if he have arrested him, to set him at Liberty.

[237.] And the like Writ and *Superfedeas* shall be awarded out of the Chancery, if the Action be brought against the Servant for his Departure, and a *Capias* awarded, &c. he may find Sureties in the Chancery for to appear at the Day, and have a *Superfedeas* to the Sheriff, that he do surcease for to arrest him, &c.

And if a Man be sued in the Common Pleas in Debt, or in Trespass for Damages, and a *Capias* or *Exigent* is awarded, if the Debtor do find Sureties in Chancery to appear before the Justices at the Day of the Return of the Writ, and to stand right according to Law, he shall have a *Superfedeas* to the Sheriff not to arrest him; and if (a) he hath arrested ed

(a) Note; If he be taken before the *Superfedeas* purchased, the *Superfedeas* is not to the Purpose: But if he comes in by delivery. ment. 11 H. 6. 32. 19 H. 6. 43. accordant, where he was taken before the *Superfedeas* delivered.

*Capi corpus*, there shall not be an Attach-



ed him, to set him at large. But it seemeth, that upon a *Capias* or *Exigent' ad satisfaciendum*, the Sheriff ought not to let the Party at Liberty after he hath taken him by Force of the Writ(a), because he is in Execution for the Party, &c. And so upon an *Exigent* awarded in a Writ of Account, he may sue forth such *Superfedeas*.

**B** And so if a Man doth become Surety for another, to pay a Fine in the Common Pleas or King's bench, and the Fine is not paid, &c. for which Cause, Process of Utlagary is awarded against the Surety, &c. at the *Exigent* awarded against the Surety, he may sue forth a *Superfedeas*, and find Sureties in the Chancery to appear at the Day, and to stand right to the Law; and thereupon he shall have a *Superfedeas* to the Sheriff, that he do not arrest his Surety, and if he hath arrested him, that he let him at Liberty.

And it seemeth reasonable that such Writ shall be granted(b), because the Fine is a Duty to the King, and the King may respite the same if he please; but if an *Exigent* be awarded upon a Judgment at the Suit of the Party, such *Superfedeas* is not allowable.

**C** If a Man be indicted before Justices of the Peace, and put in *Exigent*, he may find Sureties in the Chancery to appear at the Day of the Return of the Process awarded by the Justices of Peace, and thereupon have a *Superfedeas* to the Sheriff not to arrest him, and if he have arrested him, to set him at Liberty; and that Surety shall be Body for Body, &c.

**D** If a Man be put in the *Exigent*, at the Suit of another in several personal Actions, he may find Sureties in Chancery Body for Body, to appear to every Action at the Return of the Writs; and thereupon he shall have a *Superfedeas* to the Sheriff, reciting that he hath found Sureties in Chancery to appear at the Days, &c. commanding him not to arrest him, &c. And the Forms of the Writs of the *Superfedeas* are in divers Manners.

**E** And if a Man be indicted before Justices of Peace, and a *Capias* or *Exigent* be awarded thereupon, and afterwards the Indictment is removed by *Certiorari*; the Party out of the Chancery may sue forth a *Superfedeas* to the Sheriff not to arrest him, &c. because the Indictment is removed by *Certiorari*, &c. or the Justices of Peace *ex Officio* ought for to award a *Superfedeas* to the Sheriff after the *Certiorari* is come to them, to remove the Indictment, as it seemeth: *Tamen quære*. And in such Case he may have a *Superfedeas* out of the Chancery directed to the Sheriff, commanding him, that if the Party will yield himself to the Sheriff, and find Sureties to appear at the Day of the Return of the Writ, that then the Sheriff do not arrest him, &c.

If a Man sueth a Knight of St. *Johns* of *Jerusalem*, and other by their proper Names, and not by the Name of Knight of St. *Johns*, &c.

Z z z z

And

(a) Nor ought the Sheriff to surcease from taking him. 18 H. 6. 19. 2 H. 7. 12, 19.

(b) For if a *Mandamus* comes to the Chancellor at the Suit of the Heir; the Chancellor

ought not to surcease, by Reason of the *Superfedeas*. Dyer 170. in *Casu heredis Domini Powis*. See 4 H. 7. 16. held so by *Faifax* in a *Diem clausit extremum*.

and he be sued to the *Exigent*, the *Supersedeas* shall be purchased in the Name of the Prior, and of the said Knight his *Confrater*, in the Chancery, and there they may find Sureties to appear at the Day; and thereupon they shall have a *Supersedeas* to the Sheriff, that he do not arrest him, &c.

If a Man be condemned in Debt or Trespas by false Verdict, and a *F Capias* be awarded to arrest the Party, now if the Party sueth an Attaint, he may come into the Chancery, and there find Sureties that he shall appear at the Day, &c. and will answer the Party, and satisfy the King and the Party what belongeth to them, if the Attaint doth pass against him; and upon the same he may have a *Supersedeas* to the Sheriff, that he do not arrest him; and the Form of the Writ is such:

(a) *Rex Vic', &c. Monstravit nobis A. quod cum B. nuper implacitasset in Cur' nostra coram Justic' nostris nuper itinerant' in Com' predict' prefat. A. Et quosdam alios de quadam transgr. eidem B. per pref. A. &c. illata, ut dicebat, de qua quidem transgr' idem A. per Inquisition' (in quam se posuit coram prefatis Justiciariis) convictus fuit, per quod predict' A. carcerali custod' extitit mancipatus, in eadem moraturus quousque nobis de eo quod ad nos pertinet in hac parte, Et pref. B. de dampnis sibi adjudicatis, fuerit satisfact', ac jam pref. A. arramavit per Breve nostrum retornabile cor' nobis, &c. ubicunque, &c. quandam Juratam xxiiii. Militum ad conveniend' Juratores inquisitionis predict', Et nobis supplicaverit, ut, pendent' Jurata predict' sic coram nobis, ipsum A. a Prisonsa qua sic detinetur levare faciamus, ita quod eam prosequi possit secund' Legem, &c. Nos, volentes pref. A. in premiss. &c. subvenire, Et pro eo quod id' A. invenit coram nobis, in Cancellar' nostra, certos Manuceptores, viz. A. Et B. de Com' tuo, qui manuceperunt, viz. quilibet eorum de satisfaciend' tam nobis de eo quod ad nos pertinet, quam pref. B. de dampnis, ut predictur, adjudicatis, si Jurata predict' contra eum transierit, seu idem A. eum non fuerit prosecutus: Tibi precipimus, quod ipsum A. a prisonsa predict' si ea occasione, Et non alia, detinetur in eadem, sine dilatione deliberari fac' per Manuceptionem suprad', ita quod Juratam predict' prosequi possit, prout decet; Et habeas coram pref. Justic' ad diem predict' hoc Breve. Teste, &c.*

[238.]

If a Man be condemned in Trespas, and the Plaintiff prayeth an *A Elegit*, and a *Capias* is awarded against the Party for the King's Fine, the King may grant a *Supersedeas* directed to the Sheriff, that he do not arrest the Defendant upon the *Capias*, because that the Plaintiff hath made his Election to have his Execution by *Elegit*.

And if in Trespas the Defendant do agree with the Plaintiff pendant B the Suit, he shall have a *Supersedeas* to the Sheriff, that he do not execute the Process sued forth against him; but then it seemeth the same Agreement ought for to appear upon Record in the Court, &c.

If a Man be condemned in Trespas, and the Defendant doth bring an Attaint, and the Plaintiff sue an Execution by *Elegit*, and a *Capias* is awarded against the Defendant for the King's Fine; the Defendant in Chancery

(a) But note; The Writ of Attaint is not a *Supersedeas*, nor shall any *Supersedeas* at all be granted in Attaint. Dyer 61.



Chancery may sue a *Superfedeas* of the *Capias*, reciting in the Writ how that the Defendant hath brought an Attaint, and that the Plaintiff hath sued forth an *Elegit*, commanding the Sheriff to whom the *Superfedeas* is directed, that if the Defendant do yield himself to Prison, and there find Sureties to the Sheriff to satisfy the King for what doth belong to him, &c. that then he do deliver him out of Prison upon that Security, if he conceive the same to be sufficient Security.

D If a Man sueth a Writ *de uxore abducta cum bonis viri*, and a *Capias* Post. 251. B. or *Exigent* be awarded thereupon, the Defendant may find Sureties in the Chancery, Body for Body, to appear at the Day; and upon the same he shall have a *Superfedeas* to the Sheriff, to set him at Liberty, if he have arrested him. And so upon an Appeal of Rape, if the Defendant in Chancery finds Sureties, Body for Body, to appear at the Return of the Writ, and to stand to the Law, he shall have a *Superfedeas* to the Sheriff to set him at Liberty, &c.

E And so if a Writ be granted out of the Chancery to attach one to find Sureties of Peace for a Menace to another, he may put in Security in Chancery by Surety to keep the Peace, and thereupon have a *Superfedeas* to the Sheriff, reciting the Matter, commanding him to set him at Liberty, if he have arrested him.

If a Man sueth a *Supplicavit* out of the Chancery, to arrest a Man to find Sureties of Peace, the Defendant who is arrested may have a *Superfedeas* in Chancery to the Sheriff, commanding him not to arrest him; and the Writ shall be such:

Rex, &c. salutem. Licet nuper ad supplic' M. nobis suggerentis I. eidem M. de vita sua ac mutilation' membrorum suorum graviter comminatum fuisse, tibi per breve nostrum preceperimus, quod ipsum I. coram te personaliter venire faceres, & ipsum ad sufficient' Manuceptores inveniend' qui ipsum I. sub certa pœna, sibi per te rationabiliter imponend', pro qua respondere volueris, manu-cap', quod ipse damnum vel malum aliquod eidem M. non inferret, seu inferri procuraret, compelleres; & quod si hoc coram te facere recusaret, tunc ipsum caperes, & in prisiona nostra de N. salvo custodiri faceres, donec Securitatem invenerit in forma præd': Quia tamen R. & S. &c. coram nobis in Cancell' nostra personaliter comparentes manuceper' pro prædict' I. quod ipse damnum vel malum aliquod eidem M. de corpore suo non inferret, nec inferri procurabit, videlicet, quilibet eorum sub pœna xx l. quas concesser' de terris & catalis suis ad opus nostrum levand' si idem I. damnum aliquod eidem M. de corpore suo intulerit, aut inferri procuraverit: Tibi præcip', quod execution' Brevis nostri prædict' tibi in hac parte directi Superf. per Manuception' prædict', &c. Teste, &c.

And if the Justices of Peace do award a Precept or a Warrant against a Man to find Sureties for the Peace, he against whom the Warrant is, may find Sureties in the Chancery for to keep the Peace, &c. and upon the same have a *Superfedeas* to the Justices of the Peace, that they do surcease, &c. to arrest him, &c. and thereupon the Justices ought to surcease to make any Warrant against him afterwards; and if they have made any, that they ought to award a *Superfedeas* to the Sheriff, commanding

manding him to surcease; and the Writ directed to the Justices of the Peace is such:

*Rex dilect' & fidel' suis Justic' suis ad Pacem nostram in Com' Berk' conservand' assign', salut', &c. Supplicavit nobis W. quod cum ipse metuat ipsum ad prosecutionem T. per vos capi & arrestari, ac graviter imprisonari, quousque securitatem invenerit, quod idem W. damnum vel malum aliquod eid' T. de corpore suo non faciet, nec fieri procurabit; velimus Captioni & Arrestationi prædict' per sufficient' Manuceptores Superfederi jubere: Nos, pro eo quod R. S. P. & F. de Com' W. in Cancell' nostra personaliter constituti manuceperunt pro ipso W. quod ipse damnum vel malum aliquod eid' T. de corpore suo non faciet, nec fieri procurabit, viz. quilibet eor' sub pœna centum librarum, quas concesserunt de terris & catallis suis ad opus nostrum levare, in casu quod damnum vel malum aliquod eidem T. de corpore suo per præfat' W. vel procuracion' suam eveniat, supplicationi prædict' annuentes, Vobis mandamus, quod captioni & Arrestationi corporis præd' W. ea occasione faciend' supersed' omnino per manucept' supradict', &c. Teste, &c.*

[239.] And if the Wife be in Fear or Doubt of her Husband, that he will beat her or kill her, &c. she may sue a *Supplicavit* in Chancery against her Husband, to find Sureties that he do not beat her, nor evil intreat her, and for to govern, rule, and chastise her reasonably; and the Writ is such:

*Rex Vic', &c. Supplicavit nobis R. ux' I. B. quod cum ipsa de vita sua, &c. per præf. I. B. graviter & manifeste comminata existat, velimus pro securitate ipsius R. in hac parte provider'; nos, supplicationi prædict' annuentes, tibi præcipimus, firmit' injungentes, quod ipsum I. B. coram te coporalit' venire fac', & ipsum ad suffic' Manucept' inveniend', &c. ut supra, quod ipse præfat' R. bene & honeste tractabit & gubernabit, & quod ipse damnum vel malum aliquod eidem R. de corpore suo, alit' quam ad virum suum ex caus. regimin' & castigation' ux' sue licite & rationalit' pertin', non faciet, nec fieri procurabit, quovis modo compellas. Et si hoc coram te, &c.*

And if a Man in Court-Baron in a Writ of Right, or in other Court, A as in London, in a Writ of Right, vouch a Foreigner to Warranty, &c. the Tenant who voucheth may sue forth a *Superseas* directed to the Court, commanding them that they do not proceed in the Plea, until the Warranty be determined, &c. *quod vide* in the Register, fol. 5. 11. & 13. And upon the same he may have an *Alias*, and a *Pluries* and an Attachment, against the Bailiffs or Mayor of London and Sheriff, if they will not surcease, &c.

And if a Man sueth a Prohibition to the Spiritual Court and to the B Parson, and notwithstanding the Spiritual Judge doth proceed to excommunicate the Party, and upon Certificate thereof in the Chancery a Writ of *Excommunicato capiendo* is awarded; he who sued the Prohibition shall have a *Superseas* to the Sheriff, reciting the whole Matter, commanding him that he do not arrest the Party; and if he have arrested him, that he deliver him: *Quod vide* in the Register, fol. 67. And he may have a *Superseas* out of that Court out of which the Prohibition did issue, &c.



If the Collectors of the Subsidy or Tenths granted by the Clergy, are excommunicated by the Ordinary for their Contumacy, &c. and that be certified, and thereupon a Writ directed to the Sheriff for to arrest them, if it be testified in the Chancery afterwards by the Sovereign of the Collectors, that they have satisfied and submitted themselves; then upon that a *Supersedeas* shall be directed to surcease to arrest them; and if he hath arrested them, that he deliver them.

And if the Bishop do certify an Excommunication into the Chancery, against one for a Contempt in a Suit depending before him, and thereupon a Writ of *Excommunicato capiendo* be awarded; if the Official do by his Letters after certify in Chancery, that the Defendant hath appealed to *Rome*, or elsewhere: Now upon that Certificate, he shall have a *Supersedeas* to the Sheriff, that he do not arrest him pendant the Appeal; and if he have arrested him, that then he do deliver him, &c.

And so if he who is excommunicate sheweth in Chancery the Pope's Letters, testifying that he hath appealed, &c. he shall have a *Supersedeas* to the Sheriff commanding him for to surcease, &c. and if he hath taken him by Force of the Writ of *Excommunicato capiendo*, that then he do deliver him; *quod vide Regist. fol. 68.*

**C** If a Man take one as his Villain, and the other sueth a Writ *de homine replegiando*, and he claimeth him as his Villain; he who is taken may put in Sureties in Chancery, to yield himself and his Goods, if, &c. and thereupon he shall have a *Supersedeas* directed to him who took him, not to take him; and if he hath taken him, that then he do deliver him. *Regist. 79, 80.*

**D** If a Man do hold Plea in the County of a Trespass which is *Vi & armis*, &c. the Defendant may sue out of the Chancery a *Supersedeas* unto the Sheriff or to the Bailiffs of the Hundred where the Plea is holden, reciting that a Plea of Trespass *Vi & armis* shall not be holden in a less Court than before the King, or other Justices by his Commandment. *Regist. fol. 111.*

**E** And upon a Writ of Error brought of a Judgment given in *London* or other Court, the Party shall have a *Supersedeas* directed to the Mayor and Sheriffs, or other Officer, to surcease to award Execution. *Regist. fol. 129.*

**F** If a Man be distrained by a Process which issues out of the Exchequer, as Executor to an Accountant there, he may have a *Supersedeas* out of the Chancery directed to the Treasurer and Barons of the Exchequer, surmising that he is not Executor nor Surety for the Accountant, &c. commanding them that they do surcease, until they have enquired the Truth thereof.

**G** And the like Writ is given where the Barons do award Process of Distress against any one who hath not any of the Lands of him who was the Accountant, &c. but of his Purchase before he was Accountant; *quod vi. Regist. 144.*

**H** And if the Sheriff doth hold Plea of 40 s. the Defendant may sue forth a *Supersedeas* that he do not proceed, &c. or after Judgment he may sue a *Supersedeas* directed to the Sheriff, commanding him not to award.

43 E. 3. 21. award Execution upon such Judgment; and upon that an *Alias*, a *Pluries* and an Attachment. *Regist.* 145. 41 E. 3. *Brief* 55. *con.* in C. B. and 19 H. 6. 8. *con.*

If a Man for Debt of 10 l. sue in the County by divers Plaints there, every Plaint under the Sum of 40 s. where the Debt is one entire Debt, the Defendant may sue a *Supersedeas* to the Sheriff, commanding him not to hold Plea in those Plaints.

[240.] If a Man sue one in the County before the Sheriff for Breach of Covenants, to his Damage of 10 l. or above the Sum of 40 s. then the Defendant may sue a *Supersedeas* to the Sheriff that he do surcease; *quod vi. Regist.* 146.

And if a Man do sue forth an *Audita querela*, to avoid a Statute-Staple or a Statute-Merchant, he shall have a *Supersedeas* to the Sheriff, not to do Execution hanging the Plea, &c. *Regist.* 113. A

*Note*, That the Constable of *Dover*, who is Warden of the Cinque-Ports, cannot hold Plea of a Thing which doth belong to be determined in the County, if it be not of a Thing concerning the Keeping of the Castle of *Dover*; and if he do, the Party shall have a Writ directed unto him, to surcease, and upon the same an *Alias*, and a *Pluries*, and an Attachment; and the Writ shall be such: B

*Rex dilecto & fideli suo B. Constabulario Castri sui Dover', & Custodi Quinque Portuum suorum, vel ejus locum tenenti, salutem. Cum inter ceteros Articulos quos Domin' Ed' quondam Rex Angl' avus noster, ad emend' populi regni sui concess. ordinatum sit quod Constabularius Castri Dover' non implacitet ad Portum Castri predict' aliquod Placit' forinsecum de Com', quod non tangit Custodiam ejusdem Castri; ac vos quodd' Placitum inter W. de C. & P. de quodam debito quod idem W. a præfat' P. exigit, & quod quidem Placit' Custodiam Castri predict' non tangit, coram vobis ad Portum Castri illius teneatis, & ipsum P. ea occasione per varias distractiones inquietatis minus juse, contra tenorem Articulorum predict', sicut ex parte ipsius P. nobis datur intelligi: Nos, Articulos predict' inviolabiliter observari volentes, vobis mandamus, quod si ita est, tunc de Placito illo cor' vobis ulterius tenendo Superseadeatis omnino, ipsumque P. contra tenorem eorundem Articulorum non molestetis in aliquo seu gravetis; & Distractionem, si quam, &c.*

And if the Constable doth hold Plea of any Thing of which he ought not for to hold Plea, the Party shall have his Action upon the Statute, altho' he doth not sue forth any Writ before directed to the Constable. C

### *Writ de Procedendo ad Judicium.*

Ant. 152. D. **N**OTE, That by the Statute made *Ann'* 2 E. 3. *cap.* 8. it is enacted, That Commandment be not either by the Great Seal, nor the Petty Seal to delay common Right; but if such Commandments come, &c. that the Justices shall not surcease to do Right in any Point.

And by the Statute made *An'* 14 E. 3. *cap.* 14. the Justices shall not surcease for the great Seal or lesser Seal.

And



And by that it appeareth, that the King's Justices shall proceed according to Law, notwithstanding the King's Commandments directed and delivered to them: And if the Party thinketh in his Conscience, that such Commandments shall be made, then he may sue forth a Writ upon that Statute, commanding them to proceed, notwithstanding such Commandments; and the Writ shall be such:

*Rex dilectis & fidelibus suis, W. &c. & sociis suis Justic' ad Assis. in Com' Salop' assign', salutem. Cum in Parlamento nostro apud Northampton An' Regni nostri 2. convocato, per Nos, Prælatos, Comites, Barones, & alios Magnates, ac totam Communit' regni nostri in eodem Parlamento existentes, concord' fuerit & statutum, quod non mandetur per Magnum Sigill' nostrum nec per parvum Sigillum nostrum, ad Communem Legem impediend' seu prorogand', & si talia mandata veniant, quod Justic' ea de causa ad Justic' fac' nullatenus supers. prout in Statut' prædict' plenius continet': Vobis mandam', quod ad Justic' partibus in Assis. Novæ diss. quam T. arrainavit coram vobis per breve nostr' versus I. & A. uxor' ejus, & alios in brevi nostro origin' contentos, de Ten'tis in E. faciend', virtute alicujus mandati de magno Sigillo & parvo Sigillo nostro vobis directi seu dirigend', nullatenus Superf. contra tenorem Statuti supradict'. Teste, &c.*

But it seemeth to be in vain to sue forth such Writ, if the Justices do consider their Oath, and their Duty to God and the King: But because some Justices are fearful, and will not do a Thing which may turn to their Displeasure, that Writ was ordained, as it seemeth, and for no other Cause, for the Statute was sufficient in it self; and the Party may have in the End of the Writ these Words, viz.

*Sed ad Captionem ejusdem Assise, prout in jure & secundum Legem & consuetudinem regni nostri Angl' fuerit faciend' proced'. Teste, &c.* Bro. Ni. pri. 37.

E And by the Statute of *Westm. 2.* upon Issues joined in the Common Pleas or King's Bench, they shall be tried by *Nisi prius* before the same Justices in the Country. And by the Statute of Fines, in the Time of Vacation those Issues shall be tried before one of those Justices, associating to him a Knight, &c.

And by the Statute of *Tork*, a Justice of Assise, associating to him an honest Man shall take *Nisi prius*, and try the Issues arising thereupon taken in the Common Pleas or King's Bench, if they need not great Examination, &c. But in those Cases it appeareth by the Register, the King by his Writ may restrain and command the Justices, that they do not award *Nisi prius*; and if they have awarded any Writ of *Nisi prius*, that they send a *Superfedeas*; and Writ shall be such:

*Rex Justic' suis de Banco salutem. Licet de communi concilio regni nostri concord' existat & statutum, quod inquisitiones & Furat' in Placito terræ capiend' quæ magnæ non sunt examination', capientur in patria coram uno Just' placei ubi mot' existunt, sociato sibi aliquo probò homine patriæ milit' sive alio, ita quod communis dies det' in Banco, & certi dies & locus dentur in patria in præsent' part', & etiam quod Inquisitio & Furat' in Placito terræ magnam examinat' requirent' coram duobus Justic' de Banco in form' prædict' capiantur: Quia tamen Placitum quod est coram vobis in Banco prædict' per Breve nostrum int' W. Petentem & T. Tenent' de Mau'er de S. cum pertin'*

[241.]

*in Com' W. specialit' nos tangit, præsertim cum idem T. dictum Manerium teneat ad termin' vite sue ex concess. nostra, & post mortem ejusdem T. idem Manerium ad nos & hæred' nostros integre reverti debet; volentes indemnitati nostre prospicere in hac parte, Vobis mandamus, quod si ad Inquisit' inde capiend' procedere vos conting', tunc hujusmodi Inquisit' coram nobis in Banco præd' & non alibi capiatis, concordia & Statuto præd' non obstantibus: Et si Inquisit' inde per breve de nisi prius capi demandaveritis, tunc Inquisit' illi in patria capiend' supersederi demandetis. Teste, &c.*

There is another Form of Writ for that Matter in the Register. And M. 32 H. 6. it appeareth, that it is in the Justices Discretion, whether they will grant *Nisi prius*, or not; and by the like Reason, the King at his Discretion, and by his Writ directed to the Justices, may restrain the same.

Stamf. 156.  
Bro. Ni. pri.  
35.  
Proceedendo  
14.

And *Nisi prius* shall not be granted where the King is Party; without the King's special Warrant, or the King's Attorney's Assent, notwithstanding the aforesaid Statutes.

### *Writ upon the Statute made for the King's Steward and Marshal, that they do not hold Plea, if not, &c.*

10 H. 7. 13. **S**EE by the Statute of *Articuli super Chartas, cap. 3. (a)* That the B. Steward and Marshall shall not hold Plea of Freehold nor any Plea of Trespass, but only of Trespass done in the King's House, and other Trespasses done within the Verge, and of Contracts and Covenants which some of the King's Household ought to have against another of his Household, and no other; and no Plea of Trespass shall proceed, which is not brought before the King remove out of the Verge where the Trespass shall be done, so as that they be ended before the King go out of the Bounds of the Verge where the Trespass is done; and if they cannot be ended there, the Parties shall cease, and shall be tried at the Common Law. And the Steward shall not take Cognifance of Debts of other Men, but only of such as be of the King's House: He shall hold no other Plea by Obligation made at the Distress of the Steward or Marshal: And if they do contrary to that Ordinance, it shall be void. And the Court of the Marshalsea nor the Jurisdiction thereof shall not exceed above twelve Miles by the Statute made 13 R. 2. c. 3. And a Man may add in Action brought against him in the Court of the Steward or Marshal, that he was not of the King's Household at the Time of the Trespass or Contract made, or that the Plaintiff was not one of the King's Household at that Time. And if a Man be sued in the

2

(a) See 10 H. 6. 13. In Trespass brought there; of a Trespass done within the Verge, it is necessary that one of the Parties be of the Household, &c. as well

as in Contracts, &c. for else an Action is maintainable on the Statute. *Nul tiel Record a good Plea there.* 7 H. 6. 30.



C the Court of the Steward and Marshal contrary to the Statute, then he who is grieved shall have such Writ (a):

*Rex Sen' & Mareſchallo Hoſpitii ſui, ſalutem. Cum inter cæteros articulos quos Dominus Edwardus quondam Rex Angl', avus noſter, ad emendationem ſtatus populi ſui conceſſit, ordinatum ſit, quod Sen' & Mareſchallus Hoſpitii noſtri non teneant Placita de Libero tenemento, de Debito, Conventione, Tranſgr', ſeu contractu hominum populi, niſi tantummodo de Tranſgr', Hoſpitii noſtri & aliis Tranſgr' infra virgam, & de Contractibus & Conventibus qu' aliqui de eodem Hoſpitio alijs de eodem Hoſpitio fecerint, & in eodem Hoſpitio, & non alibi; ac jam ex querela A. & B. acceperimus, quod vos, ad proſecutionem I. de L. Placitum inter præf. A. & I. qui de eodem Hoſpitio non ſunt, ut dicitur, de quod. Debito quod idem A. de præf. I. exigit, tenetis coram vobis, in ipſius A. damnum non modicum & gravam', & contra formam Ordinationis prædictæ: Nos igitur, volentes dictam Ordinationem in omnibus & ſingulis ſuis articulis obſervari, vobis mandamus, quod ſi ita eſt, tunc de Placito illo coram vobis ulterius tenendo Superſedeatis omnino, ipſum A. contra tenorem Ordinationis prædictæ non moleſtantes in aliquo ſeu gravant'; & Diſtinctionem, ſi quam, &c. Teſte, &c.*

D And if the Plea be lawfully begun before the Steward and Marshal of the King's Houſe within the Verge, and before the Plea be ended the King doth remove; now the Plea is thereby diſcontinued, and then it behoveth the Party to commence his Action at the Common Law, and not within the Verge before the Steward and Marshal; and if he do, the Party grieved ſhall have ſuch Writ:

*Rex Senefch' & Mareſchal' Hoſpitii ſui, ſalutem. Cum inter cæteros articulos quos Dominus Edwardus quond' Rex Angliæ, avus noſter, ad emendationem ſtatus populi ſui conceſſit, ordinat' ſit quod Senefch' & Mareſch' Hoſpitii noſtri non teneant Placitum de Libero tenemento, de Debito, de Conventione, ſeu Contractu, hominum populi, niſi tantummodo de Tranſgr' Hoſpitii noſtri, & aliis Tranſgr' factis infra virgam, & de Contractibus & Conventionibus qu' aliquis de dicto Hoſpitio fecerit alicui de eodem Hoſpitio, & in eodem Hoſpitio, & non alibi, & nullum Placitum de Tranſgr' placitent aliud, quod non ſit attachiatum per eos antequam nos eximus virgam ubi Tranſgr' facta fuit, & Placit' ill' celeriter de die in diem placitent & terminent, ita quod placitent' & terminentur antequam exeamus eandem virgam ubi tranſgreſ. facta fuit; & ſi forte infra bondas illius virgæ terminari non poterint, ceſſent hujusmodi Placita coram Senefchall' & Mareſchall', & ſint Querentes ad Communem Legem; ac jam ex gravi querela A. & B. acceperimus, quod vos ad ſectam R. de B. ipſos, &c. ad reſp' coram vobis prædict' R. de quadam Tranſgr' eid' R. per præfat' A. & B. infra virgam noſtram apud E. an', &c. 12. facta, ut dicitur, quod quid' Placitum per vos attachiatum non fuit*

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A a a a 2

(a) Note; A good Rule by Babbington. 9 H. 6. 2. If a Statute gives a greater Penalty for an Offence, and alſo a ſpecial Action; there if the Party who brings the Writ, does not make Mention of the Statute, he ſhall have no Advantage of the Penalty given by the Statute; as for Hunting in Parks, or pro uxore abducta cum bonis

viri. But if a Statute gives a greater Penalty; but no other Action lies, but that which was before at Common Law, there a Man ſhall have Advantage thereof (without mentioning the Statute) as in Waſte, &c. See 9 Ed. 1. Fitzb. Tenant in Dower. So in a ſpecial Aſſiſe, where the Party is found a Diſſeiſor with Force, &c.

*fuit antequam virgam ill' exivimus, distringitis, & ipsos ea occasione multiplic' inquietatis minus juse, in ipsorum A. & B. dispendium non modicum & gravamen, & contra tenorem articulorum prædict'. Nos igitur, volentes dictam Ordination' in omnibus & singulis suis articulis inviolabiliter observari, Vobis mandamus, quod si ita est, tunc ipsos A. & B. ad resp' coram vobis de hujusmodi Transgres. nullatenus distringatis, sed de Placito illo coram vobis ulterius tenend' omnino Superf. & Distractionem, si quam, &c. Teste, &c.*

And if a Man be sued by Plaint before the Steward and Marshal of <sup>A</sup> the King's House, who is not of the King's Household, and the Debtor plead, and affirmeth the Jurisdiction of the Court; and the Cause be adjudged against him; yet he shall have an Action upon the Statute against the Party who sueth him there; *quod vide T. 3 H. 3. Title Estoppel.*

### Writ of Certiorari to remove Records, &c.

**T**HE Writs of Certiorari for to remove Records out of one Court <sup>B</sup> into another, are of several Forms; and the Form of the Writ to remove the Record of Re-disseisin is such:

*Rex Vic', &c. Quia quibuscumque certis de causis certior' velimus super Recordis & Processu cujusdam Inquisition' factæ coram te & custodibus Placitorum Coron' nostræ in Comit' tuo apud N. per Breve nostrum super quadam Rediff. I. per R. fact' ut dicitur, de uno Messuag' cum pertin' in N. Tibi præcipimus, quod si judicium inde redditum sit, tunc Recordum & Processum præd' cum omnibus ea tangentibus nobis sub sigillo tuo distincte & aperte mittas, & hoc Breve, (a) ita quod, &c. ubicunque, &c. ut inspectis Rec' & Processu*

(a) *Where the Tenor of the Record is sufficient, and where the Record it self must be removed.*

If one brings Debt on a Recovery in an inferior Court, as in a Court of Pie-powders, &c. there it is not necessary for the Party to have the Record it self, nor the Tenor of it: So if one brings Debt in C. B. on Damages recovered in B. R. or in the Court of Norwich; but if *nil tiel* Record be pleaded there, it is sufficient if the Tenor of the Record be removed into Chancery by Certiorari, and sent thence by Mittimus. 7 H. 6. 19. See 19 H. 6. 79. and so accordant, Dyer 187.

(2.) Where one is to sue Execution of a Record in another Court, as where it is to sue Execution in C. B. on a Recovery in ancient Demesne, or before Justices of Assise, or of Oyer and Terminer, there the Record it self ought to be removed into

Chancery by Certiorari, and the said Record with the Certiorari sent into C. B. by Mittimus; and so if an Attaint is before sued on such a Recovery. 34 H. 6. 251. But when Execution is to be sued in C. B. upon a Record which remains in the Treasury there, as on a Fine, Recovery, &c. (Note all those Records were removed into the Receipt of the Exchequer, circa Temp. 9 H. 4. 37 H. 6. 17.) But where it is in the Chancery as on a Petition among Parceners. Dyer 136. there they will not send in the Record it self, but a Certiorari to the Chamberlain and Treasurer, and a Mittimus of the Tenor of the Record: See the Cause 39 H. 6. 4. per Prisot; and if the Tenor of the Record be before the Certiorari filed in Chancery, they will not send the Certiorari into the Receipt. (Treasury) nor send in the Tenor which is there filed, but only *Tenorem Tenoris*, and it seems that is sufficient. 17 H. 6. 17, 28.

See



*Processu præd' ulterius inde fieri fac' quod de jure & secundum Legem & consuetudinem regni nostri Angl' fuer' faciend'. Teste, &c.*

And he may remove it after a Disseisin, &c.

And if a Man be attainted in a Re-disseisin or a Post-disseisin, and hath no Lands within the County to be put in Execution, he may

remove that Record by a *Certiorari* into the King's Bench, and there have Execution. And he may remove a Recovery in an Assise of *Novel Disseisin* into the King's Bench by a *Certiorari* in like Manner.

**C** But the Writ of *Certiorari* saith, *Si judicium inde redditum sit, tunc Record', Process. &c.* as above. By which it appeareth that it ought that Judgment be given in the Assise, &c. otherwise it seemeth he shall not have the Writ; for the *Certiorari* is said to remove the Record, to the Intent that he may sue forth Execution upon the same when it is removed in the King's Bench, for there they may award Execution into every County to execute the same.

See a Recovery in anti-ent Domesday, 39 H. 6. 3 & 4. But see 44 E. 3. 28. 36 H. 8. Br. *Certiorari* 20. there is no such Writ of *Certiorari* to remove the

Record in Com. B. immediately, but first in the Chancery. Yet 43 Ass. 20. the Contrary is admitted.

**D** If a Man do recover Lands by Assise of *Novel Disseisin*, and the Defendant will sue a Certificate before other Justices, there he ought to sue forth a *Certiorari* to the Justices of Assise, to certify the Record unto the new Justices, who hold Plea upon the Certificate, and the Words (*Sine dilacione*) shall not be put in any Writ which hath a certain Day of Return.

21 E. 3. 305. Br. Cert. Action 5.

**E** And if a Man recover *per Assise de Novel Disseisin*, and the Defendant will sue an Attaint before other Justices, then he ought for to have a *Certiorari* to the Justices of Assise to certify the Record, *Si judicium redditum sit*.

And if a Man recover before Justices in Eyre in an Assise of *Novel Disseisin*, the other Party may sue forth an Attaint before other Justices, and have a *Certiorari* to the Justices in Eyre to send the Records before the other Justices.

**F** And the King may send his Writ of *Certiorari* to the Barons, Treasurer, and Chamberlains of the Exchequer, to certify the Record of Assise in the Treasury in their Custody into the King's Bench.

37 H. 6. 16.

There is another Writ of *Certiorari* to the Treasurer and Chamberlains of the Exchequer, to certify the Record of the Assise taken, but the Judgment was not given, because the Defendant died; but the Writ

9 E. 4. 50. Choc. 24 E. 3. 24. 15 E. 3. 5. 8 E. 4. 25. is 26.

See 24 E. 3. 79. that no Execution can be on the Tenor of a Record. Dyer 217. No *Sine facias* on the Transcript of a Return sent out of Chancery into C. B. and see Dyer 228. and 5 H. 7. 25. where a Record is pleaded in the same Court, and *nul tiel Record* pleaded thereto, it ought not to be entred *quod habeat hic Recordum sub suo periculo. Et quia Justiciarii hic ne advisari volunt super Inspectionem & Examinationem Recordi, &c. Dies Dat' est partibus,*

&c. See and note 31 H. 6. 51. 39 H. 6. 3. 32 E. 3. *Quare Imp'* 1. where *nul tiel Record* is a good Plea. See 7 H. 6. 30.

Note; The Statute 1 & 2 Phil. & Mar. is that no *Certiorari* to remove any Recognizance shall be awarded, except the Writ be signed with the Hand of the Chief Justice, or some other Justice in his Absence. Vid. Rast. Stat. Mainprise pl. 45.

Note, A Record may be removed after a Disseisin, &c.

is of little Effect, for that by the Death of the Defendant before Judgment the Writ is abated.

And if a Man will sue an Attaint upon Recovery in an Assise, which Record of Assise is in the Treasury, then he who bringeth the Attaint (a) ought to sue a *Certiorari* to the Treasurer and Chamberlains of the Exchequer, to certify the Record of Assise before the Justices, before the Attaint be sued forth.

[243.] If a Man do recover Damage in an Assise of *Novel Disseisin*, and before he hath Execution of the Damages, the Record is sent into the Treasury; then he may sue a *Certiorari* to the Treasurer and Chamberlains, to certify the Record of Recovery in the Assise before the King, that Execution may be awarded for the Damages.

And if a Man recover Lands and Damages in an Assise of Fresh Force, B and the Defendant hath not any Thing within the City or Borough for to satisfy the Damages; then the Party may sue a *Certiorari* to the Mayor or Bailiffs, to certify the Record into the King's Bench, that he may have Execution of the Damages recovered.

If the King maketh certain Persons Justices of Assise, &c. in one C County, and afterwards at another Assises he maketh other Justices of the same County; a general *Certiorari* shall be sued to the first Justices, to certify all the Records of Assise and Juries which were taken in that County before the new Justices.

And in Assise of *Novel Disseisin* if the Verdict pass for the Plaintiff, D and before Judgment be given a new Commission is to other Justices of the same County, the Party for whom the Verdict passed, may sue forth a *Certiorari* to the first Justices, to remove the Record into the King's Bench, to have Judgment given there upon that Assise and Verdict past; or may have a *Certiorari* to the first Justices, to send the Record before the new Justices, that they may give Judgment thereupon: And it behoveth to have another Writ unto the new Justices, to receive the Record, and that they proceed to Judgment. And when the Record is removed after Verdict given before other Justices, and they delay to proceed to Judgment upon the Verdict, the Party for whom the Judgment should be given may sue forth a Writ directed to them, *quod receptis & visis Record & Process. predicti*, they proceed to Judgment, &c. And thereupon the Party may have an *Alias*, and a *Pluries*, *Vel causam nobis significes*: And if they will not do any Thing, whether he shall have an Attachment is a Question; for there is a Statute made A. 3 E. 3. which willeth, that Commissioners in special Case limited by the Statute shall be punished for their Misdoings; but it seemeth it shall not be, if the Statute be not made, for that Cause only.

27 Ass. pl. 18.  
2 R. 3. 9.  
Bro. Indict-  
ment 50.

And An' 27 E. 3. in Assise, a Justice was indicted, for that he E caused an Indictment, which was found to be but Trespass, to be entred in Record as Felony, &c. And the same was adjudged a void Indictment, because it was to make void a Record. But yet it seemeth he might be indicted, for taking of Money, or for other Falsity, which doth not destroy and defeat the Record. *Quare.*

And

(a) *Note*; Here there ought to be the Record it self, and not a Tenor only. 39 H. 6. 4.



F And a Man may have a Writ to the same Justices before whom the Verdict passed, &c. to proceed to Judgment, as well as he shall have a Writ to other Justices before whom the Record is removed (a).

G If a Man in an Assise of *Novel Disseisin*, or other Action real, before Justices in Eyre vouch one to Warranty, who presently entreteth into Warranty, and afterwards loseth; the Plaintiff shall recover, and Tenant shall have Judgment to recover in Value against the Voucher: Now if he who recovered in Value, will have Execution of the Lands recovered in Value, he ought to sue a *Certiorari* to the Treasurer and Chamberlains of the Exchequer, to certify the Record in Assise into the Chancery; and when it is there certified, the King shall send the (b) Record by *Mittimus* into the Common Pleas, and thereupon the Justices shall award a *Scire facias* against the Party against whom the Recovery was, to come and shew why Execution should not be done of Lands in Value.

H And a Man may sue a *Certiorari* directed to the Justices of Assise, to remove the Records of Assise into the Chancery, and also a Deed which is before them, &c. and afterwards he may sue forth a Writ of *Mittimus* unto the new Justices of Assise of those Records, and of the Deeds which remained before the other Justices.

I And if the Husband and Wife sue a Bond, which is made to the Wife, in the Common Pleas, and the Deed is there denied, for that they remain in the Keeping of the *Custos Brevium*, and the Husband dieth; the Wife may have a Writ out of the Chancery directed to the *Custos Brevium* in the Common Pleas, that he deliver the Deed to the Wife, because the Plea is determined by the Death of the Husband.

K And when the Justices in Eyre come, and shall be in any County by the King's Commission, then a Writ shall be sent to the Justices of the Common Pleas, to adjourn all the Pleas of that County which are in the Common Pleas before the Justices in Eyre, to be determined before them: And if the Justices in Eyre cannot determine the Pleas before they depart out of the County, then a Writ shall be sent to the Justices in Eyre, to send those Records and Pleas, which are not determined nor adjudged, into the Common Pleas again: And the Writ shall be such:

Rex

(a) Note; If the Justice of *Nisi prius* die before the Day in Bank, after the Verdict taken, the Court may receive the Record by the Hands of the Clerk of Assise, without any *Certiorari* to the Executors of the Justice, and the Entry hereof shall be general. *Ad quem Diem hic vener' partes, Et Jusficiarii ad Assisas coram quib', &c. Miserunt hic Recordum script' in hac verba, &c.* And admit that it be Error, yet this shall be received to be assigned for Error; for it is contrary to what the Court did as Judge; and though in some Cases the Court shall give Faith to the Death of a Judge, as 2 H. 7. A Servant of an At-

torney was received by a Judge who died in *Pais. Dyer* 163. But note; If a Justice of *Nisi prius* be removed, &c. the *Certiorari* shall be to himself; and so if his Executors have the Record, the *Certiorari* shall be to them. See *Dyer* 439. 13 H. 7. 21.

(b) Note; A *Scire facias* lies on the Tenor before any Entry thereof on the Roll. And if the Transcript of a Fine comes in by *Mittimus*, at the Suit of one, and another has Cause to have Execution upon the same Fine, he ought to pursue the *Mittimus* to have Execution; for otherwise he cannot have it, although the Tenor was entered on the Roll before.

[244.]

Rex dilectio & fideli suo S. salut'. Cum Loquela quæ fuit cor' Justic' nostris de Banco per Breve nostrum int' S. Petent' & I. Tenent' de uno Messuag' cum pertin' in T. in Com' N. una cum Brevi prædict', cor' vobis & sociis vestris nuper Justic' nostris itinerant' in Com' prædict' missa fuisset placitanda, ac Placitum illud quibusd' cert' de caus. in itinere prædict', remanserit indiscussum, absque hoc quod idem Placit' alicubi adjornat' fuisset placitand', per quod ex parte ipsius S. nobis est supplicat', ut sibi in præmiss. Justic' facere velimus; Nos ea de causa attendentes expediens fore, quod Just' nostri de Banco super Record' & Processu Loquela prædict' cor' vobis & præfat' sociis vestris in itinere prædict' certiores, vobis mandam', quod Record' & Process. prædict' una cum Brevi prædict' & omnibus aliis ea tangentibus, præf. Just' nostris de Banco sub sigillo vestro distincte & aperte sine dilatione mittatis, & hoc Breve, ut his inspectis, ulter' proced' in Loquela præd' secund' Legem, & cons. regni nostri valeant. Teste, &c.

Br. Brief  
414. - Vid.  
22 H. 6. 15.  
23 Ass. 14.  
Br. Brief  
282.  
40 E. 3. 32.  
Br. Brief  
304.

And if an Assise of Novel Disseisin be brought in the King's Bench, A and the Defendant alledge and plead, that there is a Writ of a higher Nature depending in the Common Pleas for the same Land between the Plaintiff and Defendant; then if they be at Issue, whether there be such a Writ depending or not, the Defendant ought to sue a Certiorari out of the Chancery to the Justices of the Common Pleas, to remove and certify the Records into the Chancery; and upon the same certified, he shall have a Writ of Mittimus out of the Chancery to the Justices of the King's Bench; with which Writ the King shall send the Tenor of the Record which is there into the King's Bench: And the Writ of Mittimus shall be such:

Rex dilectio & fideli suo R. de W. & sociis suis Just' ad Placita coram nobis tenenda assign' salut'. Cum R. P. nuper arrainavit quandam Assisam novæ diff. cor' nobis apud West' per Breve nostrum versus B. de ten'tis in A. & duo messuag', tres carucatas terræ, viginti acras prati, cum pertinen' in eadem villa in visu posuiss. idemq; H. placitand' in Assisa illa allegasset, quod Breve de altiori natura tunc & diu ante pendebat inter partes prædict' coram dilectis & fidelibus nostris W. & sociis suis Justiciariis nostris de Banco, & Record' & Process. inde coram præfat' Just' nostris de Banco habita ad Warrantum vocasset, ut accepimus; Nos attendent' expediens esse & necesse quod vos super tenor' Record' & Process. prædict' coram præfat' Just' de Banco habit' certioremini, tenorem illum quem coram nobis in Cancell' nostra venire fecimus vobis mittimus sub pede sigilli, mandant', quod inspectis Record' & Processu prædict' ulterius fieri fac' quod de jure & secundum Legem & cons. regni nostri fuerit faciend'. Teste, &c.

And if a Man do recover in an Assise of Novel Disseisin before Justices B of Assise in the County, and before Execution sued of the Damages, the Record is removed into the Chancery by Certiorari; he who recovered in the Assise may sue forth a Writ of Mittimus to send the Record into the King's Bench, commanding them for to proceed, and to award Execution; and the Writ is such:

Rex dilectis & fidel' E. & sociis suis Justic' nostris ad Placita coram nobis tenend' assign' salutem. Cum I. per Recogn' Ass. de nova diff. quam W. arrain' coram B. & sociis suis nuper Just' Domini Edwardi quandam Regis Angl'



Angl' avi nostri, ad Aff. &c. assign' versus R. & alios, &c. de Tenementis in T. recuperasset seisinam suam de uno messuag' cum pertin' in D. per consider' cur' prædict' & dampna sua, quæ ad x. li. taxabantur, sicut per Record' & Process. Aff. prædict' quæ coram nobis certis de causis venire fecimus plenius apparet; ac Executio Judicii quoad dampna recuperanda adhuc restat faciend', sicut ex parte ipsius I. nobis dat' intelligi: Nos igitur volent' dictum Judic' execut' debite demandari, Record' & Process. præd' vobis mittim' sub pede sigill' nostri, mandantes, quod vis. Record' & Process. prædict' ulter' quoad exec' Judic' præd' fieri faciatis quod de jure & secundum Legem & cons. regni nostri fuerit faciend'. Teste, &c.

**C** And if a Man recover Lands by Assise of Novel Disseisin before Justices of Assise, and the Defendant hath a Writ of *Warrantia Chartæ* depending in the Common Pleas, the Party may sue a *Certiorari* to remove the Record of the Assise in Chancery, and thereupon have a *Mittimus* of the Record of Assise to the Justices of the Common Pleas, and in the End of the Writ shall be said, *ut hiis inspectis, securius procedere valeant in Placito Warrantiæ præd' secund' Legem, &c.*

**D** And in Assise of Novel Disseisin, if the Defendant plead two or three Recoveries in Assise before other Justices, which Record is in the Treasury, &c. now if the Record be denied, for which he sueth a *Certiorari* to the Treasurer and Chamberlains of the Exchequer, to certify the Records at a certain Day into the Chancery; if they at the Day certify any Records, but do not certify that there are other Rolls of the same Justices remaining in the Treasury in the Tower of London, so as that they have not made a full Search of the Records; then the King shall send to the Justices of Assise his Writ, reciting the Matter, commanding them for to continue that Assise until another Day, so as the Defendant be not damnified by failing of the Record; and the same seemeth to be reasonable.

And if a Man be bound in a Statute-Staple to pay a certain Sum of Money at a Day certain, after the Day the Party who hath the Statute, may come to the Mayor of the Staple and shew him the same, and pray him to certify the same into the Chancery; and if the Mayor will not so do, then the Party who hath the Obligation may come into the Chancery, and shew the same there, and pray a *Certiorari* to the Mayor to certify the Inrolment of the Statute: And if the Mayor do return, that he hath twice or oftner, certified the same before that Time, as appeareth by the Inrolment made by the Mayor, if there appear no such Certificate upon Record in the Chancery, then he who hath the Bond of the Statute may sue forth a new *Certiorari* to the Mayor, reciting in the Writ, that there is not any Certificate recorded in the Chancery, commanding him to certify the Inrolment of the Statute which is before him; and upon the same he may have an *Alias* and a *Pluries* against the Mayor, if he will not certify the same, and also an Attachment against the Mayor, directed to the Sheriff, &c.

[245.]

Vid. 10 El.  
Dyer 274.  
275.

But see  
Lambert 411.  
The Use at  
this Day is,  
to award a  
Subpoena to  
the Commiss.  
37 H. 6. 30.  
Marle.

The Writ of *Certiorari* is an (a) original Writ, and issueth sometimes A out of the Chancery, and sometimes out of the King's Bench, and lieth where the King would be certified of any Record which is in the Treasury, or in the Common Pleas, or in any other Court of Record, or before the Sheriff and Coroners, or of a Record before Commissioners, or before the Escheator; then the King may send that Writ to any of the said Courts or Offices, to certify such Record before him *in Banco*, or in the Chancery, or before other Justices, where the King pleaseth to have the same certified: And he or they to whom or who the *Certiorari* is directed, ought to send the same Record according to the Tenor of the Writ, and as the Writ doth command him; and if he or they fail so to do, then an *Alias* shall be awarded, and afterwards a *Pluries*, *Vel causam nobis significes*, and after an Attachment, if a good Cause be not returned upon the *Pluries*, wherefore they do not send the Record.

Also the King might by such Writ of *Certiorari* send for the Tenor B of the Record, or for the Tenor of the Tenor of the Record, at his Election; and those Writs ought for to be obeyed, and the Records sent, as the Writ commandeth them to do; and the Form of some of those Writs here followeth:

*Rex dilecto & fideli suo R. salut'. Quia quibusdam certis de causis Certiorari volumus super Record' & Process. Utlag' in I. Com' T. promulgat' & coram vobis & sociis vestris Just' nostris ad divers. Felonias in Com' predict' audiend' & termin' assign' retornat': Vobis mand', quod tenor' Record' & Process. predict': Or thus; tenor' Record' & Process. Utlag' prae'd' cum omnibus ea tangent' nobis in Canc' nostra sub sigillo vestro distincte & aperte sine dilatione mittatis, & hoc Breve. Teste, &c.*

And to certify an Indictment taken before the Justices in Eyre, the C Form is such:

*Rex, &c. Quia super Praesentation' factam coram vobis & sociis vestris Justic' nostris itinerant' in Com' Lincoln' de morte A. unde B. captus & detentus in prisona nostra de N. rectatus est, & etiam super inquisition' inde coram vobis ibid' fact' quibusdam certis de causis volumus certiorari; Vobis mandamus, quod irrotulationem Praesentat' & Inquisitionis prae'd' nobis sub sigillo vestro distincte & aperte sine dilatione mittatis, & hoc Breve. Teste, &c.*

And there is another Form of Writ directed to the Coroners: D

*Rex Coronator' suis in Com' Lincoln' salut'. Quia quibusdam certis de causis certiorari volumus super Recordo & Processu cujusdam Appell', quam W. nuper Probator' defunct' fecit versus S. de quadam Roberia quam id' W. & B. in Com', &c. ad invicem fecisse dicebantur; Vobis praecipimus, quod Record' & Process. ejusd' Appell' cum omnibus ea tangentibus, nobis sub sigillis vestris, &c. And that Writ lieth where a Man before Justices becometh an Approver, and the Coroner appointeth him to make his Approvement, and afterwards the Approver dieth; the King may write unto the Coroner to send him the Record of the Approvement.*

And another Form of *Certiorari* to the Mayor and Sheriffs of London. E  
*Rex*

24 Aff. 40.  
Br. Certiora.  
9. the Writ  
was awarded  
to the Exec-  
utors of the  
Coroner.  
Vid. 36 H.  
6. 24. For  
*Certiorari* to  
the Coro-  
ners, Vid.  
2 Eliz. Dyer  
223. Proct-  
er's Case.

(a) A *Certiorari* out of B. R. was to remove the Record of the Foot of a Fine in C. B. and 'twas not allowed, but a *Certio-* vari out of Chancery for the Tenor was, and then 'twas sent into E. R. by *Mittimus*. Dyer 275.



*Rex Major' & Vic' London' salutem. Quia quedam negotia per Appell', Indistamenta & Attachiament' coram vobis in Civitate præd' Lond' nuper intrata nondum terminant', & quedam Inquisitiones in eadem Civitate factæ fuerint retornat', quorum quidem negotiorum Inquisitiones, Record' & Process. penes vos resident, ut dicitur, & quæ omnia per dilectos & fideles nostros B. C. & D. Justic' nostros ad diversas transer' in Civitate præd' fact' audiend' & terminand' assign', expediri volumus, & finalit' terminari: Vobis mandamus, quod præd' Record' & Process. cum omnibus ea tangent' præf. Justic' sub sigillis, &c.*

F And if the King by Virtue of any Writ (a) of *Certiorari*, remove any Record before any of the Justices, he may afterwards send for that Record, and remove the same before himself, or other Justices, at his Election; and then the Writ is such:

*Rex, &c. Quia quibusdam certis de causis Certiorari volumus super Record' & Process. cujusdam Inquisitionis capt' coram dilectis & fidelibus nostris W. & P. Justic' nostris ad Gaolam nostram de N. assign' deliberand', pro morte E. unde C. pro morte prædict' rectatus fuit, ut dic', quæ quidem Record' & Process. coram vobis certis de causis venire fecimus, quæ penes vos resident, ut dic'; Vobis mandamus, quod Record' & Process. præd' cum omnibus eo tangent' nobis sub sigillis vestris distincte, &c.*

G And when the King would be certified of an Outlawry in the County, then the *Certiorari* shall be as well to the Sheriff as to the (b) Coroners of the County to certify the same. But if a Man be condemned in the King's Bench, and afterwards outlawed for the King's Fine upon his Condemnation; if he will sue forth a Pardon of the Outlawry, he ought to have a *Certiorari* out of the Chancery, to certify the Record of the Condemnation, which shall be such:

*Rex dilecto & fidei suo I. &c. Capitali Justic' suo, salut'. Cum E. de quadam transgr' F. vi & armis facta coram nobis convictus, & pro eo quod non venit coram nobis ad satisfaciend' nobis de redemptione sua quæ ad nos*  
B b b b 2 *pertinet*

(a) And this Writ being delivered to the Justices, seems to suspend their Power, so that if they arrain the Party upon an Indistament afterwards, 'tis erroneous. 21 H. 6. 28. also after the Return, altho' the Indistament be not removed, they cannot proceed, and if they do, 'tis Error. 6 H. 7. 16. per Keeble. See Dyer 245.

(b) See it directed to the Coroners only. 9 H. 4. 7. 36 H. 6. 13 Dyer 223. viz. where there is a Default in the Sheriff, in not returning, or misreturning the Exigent. See the Writ to the Sheriff and Coroners. Register 284. 38 E. 3. 14. & alibi. For altho' the Judgment is rendred by the Coroners, as 21 H. 7. 33. yet the Record is in Custody of the Sheriff, and the Coroners have only a short Note or Memorandum of it. Dyer 223. and see in London a Writ to the Sheriffs only. Dyer 318.

See on a Record of Outlawry certified

by a *Certiorari*, a Charter of Pardon, and a *Scire facias* issued. 9 H. 4. 7. and the Sheriff shall be amerced, if it be returned on the Exigent, de 4to. *Exact'* only. 36 H. 6. 13. but the Party shall not be disabled. 21 Ass. 49. If a *Capias utlagat'* shall be awarded, *Quere* 38 E. 3. 14. the Goods of the Party seised as forfeited. Dyer 221. *Proffter's* Case. *contr. Co. Lit.* 288. See the Judgment in *Proffter's* Case; that the *Certiorari* shall be granted to the Coroners for the Outlawry, either for hastening the Sheriff to return the Exigent, or to have him amerced for his Concealment, or to falsify his Return, as if he returns 4to. *Exact'* where it was 5to. *Exact'* and is not to disable the Party; for till the Exigent, which is the Sheriffs Warrant, be returned, there is no Forfeiture. *contr. Dyer* 318. *Patten and Haines's* Case.

[246.]

*pertinet in hac parte, & præfat' F. de dampnis sibi in hac parte adjudicat', in Exigend' posit' fuisset ad utlagand' & ea occasione postmodum utlagat', quæ quidem utlag' coram nobis jam est retornata, ut accepimus; ac idem E. nobis supplicaverit, ut cum ipse præf. F. de dampnis suis præd' jam satisfecerit, velimus ei Utlag' præd' gratiose pardonar'; Nos ea de causa certior' volentes super Record' & Process. Utlag' præd', & si idem E. præfato F. de dampnis præd' satisfecerit (ut dictum est) necne, Vobis mandamus, quod nos super præmiss. sub sigillo vestro distincte & aperte, &c. reddatis certiores.*

And if a Man be indicted before Justices of Gaol-delivery of Felony, A and afterwards is acquitted; then if he who is acquitted doubteth he shall be troubled by Reason of the same Indictment, he may sue forth a *Certiorari* to remove that Record and Process of the Inquisition, &c. into the Chancery, &c.

14 H. 7. 15.  
15 H. 7. 5.  
36 H. 6. 23.  
39 H. 6. 34.

And if a Man do recover Debt or Damages before Justices of Oyer B and *Terminer*, and hath not Execution, he may remove the Record and the Process into the King's Bench, and there sue Execution, and have a *Scire facias* upon the Record, &c.

34 H. 6. 47.  
contra.  
4 E. 4. 39.  
33 H. 6. 48.  
Danby.  
47 E. 3.  
Execut. 41.  
2 Cro. 143.

And if a Man do recover Damages in an Action of Trespas before Justices of Oyer and *Terminer*, and hath the Party in Execution by Reason of the Judgment; if the Party in Execution dieth in Prison, he who recovered may sue a *Certiorari* to the Justices to remove the Record into the King's Bench, that the Justices there may award Execution as the Law requireth in such Case. And, I think, in that Case, that the Party shall have Execution by *Elegit*, or by *Scire facias*; for it seemeth not to be reasonable, that the Death of him who dieth in Prison should be a Satisfaction to the Party. *Tamen quære*, for the same is a Doubt.

Post. 247.

If a Man be arraigned of Murder, and found guilty *se defendendo*, for C which he is bailed, or committed to Prison, he may have a *Certiorari* to remove the Record into the Chancery, that he may sue forth a Pardon thereupon according to the Course of the Law, &c.

If a Man recover Damages in Trespas in the King's Bench, and D hath the Defendant's Lands in Execution by *Elegit*, and then he who recovereth is disseised by the other, for which he bringeth an Assise before the Justices of Assise; he who bringeth the Assise ought to have a *Certiorari* to the Chief Justice of the King's Bench, to certify the Record and the Proceedings to Judgment given in the King's Bench, and of the Execution there; and the Plaintiff may have the Record in Chancery exemplified under the Great Seal, if Need be, to the Justices of Assise.

And if a Man recover by Assise of Novel Disseisin, and the Party E will sue an Attaint in the Common Pleas, or in the King's Bench, he ought to sue a *Certiorari* to the Justices of Assise, to remove the Record in the King's Bench, or into the Chancery, &c. that he might send the same before the Justices before whom the Attaint is sued, &c.

And it appeareth by the Register in the Title [*Certiorari*] that if F false Judgment be given before the Steward and Marshal of the King's House, upon a Plaint there sued, that the Party may sue an Attaint by

Writ



Writ before the Steward and Marshal to attain that Jury, &c. and that the King may send a *Certiorari* to certify the Record into the Chancery, which shall be directed to the Steward and Marshal of the King's House; but the Record shall be certified under the Seal of the Steward only, as appeareth by the Words of the Writ, &c.

G There is another Writ of *Certiorari* directed to the Treasurer and Barons of the Exchequer, to certify the King of the Debt which *I.* oweth unto him, and of the Debt which the Ancestor of the said *I.* owed the King, and which are clear Debts, and to certify the same without Delay under the Exchequer-Seal, and not into the Chancery, nor into the King's Bench.

H There is another *Certiorari* directed to the Justices of Gaol-delivery, to certify the Record and Proceedings upon an Indictment of Murder, and Acquittal thereupon into the Chancery, &c.

I There is another *Certiorari* to the Justices of Peace, to certify into the Chancery the Tenor of the Records and Process of Outlawry of several Persons returned before them.

K There is another Writ of *Certiorari* directed to the Steward and Marshal of the King's House, to certify under the Seal of the Steward into the King's Bench an Indictment taken before the Steward and Marshal, which the King would have to be determined only before him in the King's Bench.

L There is another Writ of *Certiorari* to the Mayor and Sheriffs of York, to certify the Tenor of the Record and Proceedings in an Assise of *Fresh Force* sued before them in the same City without Writ, and to certify the Tenor of the Record and Proceedings in the Chancery.

M There is another Writ of *Certiorari* to the Bishop of Oxford, to certify into the Chancery how many Persons were admitted, instituted and inducted into such a Church, since the Statute of King *Edward IV.* until this Time, and at whose Presentation, and by what Title, and in what Manner.

N There is another Writ of *Certiorari* to the *Custos brevium*, to certify the King in the Chancery the Tenor of the original and judicial Writs, and the Warrants of Attorney which are in his Custody concerning such an Action or Suit.

O And another Writ directed to the Treasurer and Chamberlains of the Exchequer, to certify the King in the Chancery the Record and Proceedings of a Writ of *Quo Warranto* sued by the King's Ancestor, King *Edward I.* against the Abbot of *Westminster*, for certain Liberties claimed by the said Abbot, &c.

[247.]

A And another Writ of *Certiorari* to the Commissioners of Sewers, to certify the King in the Chancery at a certain Day all the Presentments before them made against such a Person, &c.

B And a Writ of *Certiorari* directed to the Chief Justice of the Common Pleas, to certify the Tenor of a Record and Proceedings of Utlagary against such a one in London, remaining in *Middlesex* before the Justices of the Common Pleas, and to certify the same into the Chancery.

And

And if a Baron who is a Peer of the Realm, be sued in the Common C  
Pleas, and Process be awarded against him by *Capias* or *Exigent*, then he may sue a *Certiorari* in the Chancery, directed to the Justices of the Common Pleas or King's Bench, testifying that he is a Peer of the Realm, commanding them to award such Process against him as they ought to do against a Peer of the Realm; and the Writ is such:

*Rex Justiciar' suis de Banco salutem. Mandamus vobis, si G. T. mil' coram vobis ad sectam alicujus per Actionem personalem implacitatus existat, talem Processum, & non alium, vers. ipsum in Action' predict' fieri faciat, qual' versus Dominos, Magnates, Comites, seu Barones Regni nostri Angliæ, qui ad Parliamenta nostra de summonitione venire debent, aut eorum aliquem, secundum Legem & cons. Regni nostri Angl' fuer' faciend', quia pred' G. T. unum Baron' regni nostri pred' ad Parliamenta nostra de summ' Regia venient' record', & hoc vobis mandamus, & aliis quor' interest innotescimus. Teste, &c.*

And if a Man recover Damages and Costs in an Assise of Novel Dis- D  
seisin, he may sue a *Certiorari* to remove the Record into the Chancery, directed to the Justices of the Assise, to the Intent that the King may send the same to any of his Courts, that he who recovereth may sue Execution of the Damages recovered; and upon that Record sent into the King's Bench, he shall send that Record into the Common Pleas by Writ of *Mittimus* directed to the Justices there, that they do as they ought for to do according to the Law, to make the Damages to be levied.

There is another Form of *Certiorari* by these Words:

*Rex Vic', &c. Volentes certis de causis certior' super tenorem Record' & Process. Utlag' in W. de B. de Com' N. Husbandman, in eodem Com' : Or thus; in Hustingo nostro London' promulgat', & coram Justiciar' ipsius Regis de Banco cert', quod quidem Record' & Processum idem Rex coram eo cert' de causis venire fecit, ut dic', ac si idem W. se redd' prisonæ Mareschalcie ipsius Regis coram eo occasione predict' necne : Ideo tener' Record' & Process. Utlagar' predict' necnon Certificatio redditionis illius eidem Regi in Cancell' suam, sub sigillis I. F. Capital' Justic' sui ad Placita coram ipso Rege tenend' distinde & aperte sine dilatione mittantur cum hac Billa. Teste ipso Rege apud Westm' xii die Maii, anno Regni sui 30.*

Ant. 246. E. And by that it appeareth, although the Record be remaining in Banco, yet the King may send to remove it into the Chancery.

And if a Man be arraigned of Murder, and it is found that he killed F  
the Party *se Defendendo*, he ought for to sue a *Certiorari* to remove the Record into the Chancery, and upon the Removal thereof to have his Pardon; and the Form of the Pardon doth appear in the Register, fol. 287, 288.

And if a Man be attainted in Assise of Novel Disseisin before the G  
Justices of Assise, of a Disseisin with Force; and be afterwards outlawed for the King's Fine; if he will have a Pardon of the Utlagary, he ought for to have a *Certiorari* directed to the Justices of Assise, to certify the King in his Chancery the Tenor of the Record of the Assise, and also another Writ to the Justices, to certify the King in his Chancery whether



ther the Defendant in the Assise hath yielded himself to Prison, and hath satisfied the Party his Damages. And if the same be so certified in the Chancery, then upon that Certificate he shall have his Pardon of the Outlawry, and the Form of the Charter of Pardon appeareth in the Register, 288.

And if a Man be condemned in the Common Pleas in Debt, and Outlawry upon the same; then, before he shall have his Pardon, he ought for to yield himself to the Prison of the Fleet, and satisfy the Party, and the Record of his Condemnation and of the Satisfaction ought to be certified by *Certiorari* unto the King in his Chancery; and thereupon he shall have his Pardon, and that is by the Statute of 5 E. 3. cap. 12.

And if a Man be outlawed severally at the Suit of three several Persons in several Actions in which he was condemned, he ought to sue a *Certiorari* to remove the Tenor of those Records and Process into the Chancery; and also to have a *Certiorari* to the Justices of the Common Pleas, if the Suit be there, to certify the King in Chancery whether he hath yielded himself to the Prison of the Fleet, and hath satisfied the Parties; and when the Chief Justice hath certified the same into the Chancery, then he shall have his Pardon for the Outlawries, and not before; and the Form of the Pardon appears in the Register, 288.

H There is another *Certiorari* to the Escheator, to certify the Manner and Cause of taking of Lands into the King's Hands after the Death of one; and the Writ is such:

*Rex Eschaetori, &c. salutem. Cum quibusdam cert' de causis certior' volumus super mod' & caption' terr' & tenementor' quæ fuer' I. defuncti in B. in Ball' tua per te in manum nostram, ut dicit', seist'. Tibi præcipimus, quod nos in Cancellar' nostra super mod' & causa supradict' sub sigillo tuo distinct' & apert' sine dilatione redd' certior' hoc breve nobis remittentes. Teste, &c.*

But note, that it is enacted by Statute, that if the Escheator find any Office of any Lands or Tenements for the King, that he ought for to return the Office into the Chancery, or into the Exchequer, within a Month after the Finding thereof, upon Pain of 20 l. payable to the King, and to him that will sue for the same; and that Statute was made Anno 8 H. 6. cap. 26. [248.]

A There is another *Certiorari* directed to the Escheator, to certify the King in Chancery, at his Peril, the Value of the Knights Fees and of the Advowsons which I. had, who is dead, who held of the King the Day of his Death in Capite; and the Writ is such:

*Rex Eschaetori, &c. Volent' certis de causis certior' super vero valore Feod' Milit' & Advoc' Ecclesiar' quæ fuer' I. defunct', qui de nobis tenuit in capit' in Ball' tua die quo obiit, & quæ occasion' mortis ejusd' I. capt' sunt in manum nostram; Tibi præcipimus, quod Feod' illa & Advocat' præd' per sacrament', &c. diligent' extendi facias, quantum, viz. valeant per ann' in omnibus exit' juxta valor' eorundem, & Extentam illam distincte & aperte fact' nobis sub sigillo tuo & sigillis eorum per quos fact' fuer' sine dilatione mitti & hoc Breve. Teste, &c.*

And

And if a Lunatick or a Madman doth kill a Man, or if a Man doth B kill a Man by Misfortune, or if an Infant of 8 Years old doth kill a Man ; if they will sue a Pardon for the same, the Use is, to sue a *Certiorari* to remove the Tenor of the Record and Process into the Chancery, and thereupon to have a Pardon ; and in the Register do appear several Forms of such *Certioraries* to remove such Records, which a Man may see there more fully, and therefore they are not here mentioned.

### Writ of Forcible Entry upon the Statute of 8 H. 6.

THE Writ upon the Statute of 8 H. 6. of Forcible Entry lies where C a Man is disseised or put out of his Lands or (a) Tenements with Force, whereof he is seised as of an Estate of Freehold in Fee-tail, or in Fee, or for Life ; he may sue forth that Writ of Forcible Entry upon that Statute ; Or if he be disseised or put out of his Lands and Tenements peaceably, and afterwards the Disseisor, or he who ousteth him, doth keep and detain the Lands and Tenements with Force, then he who is put out may sue that Writ if he will, and in that Writ he shall recover his Damages and his Costs treble for what he is found (b) damnified by the Jury, and what he hath expended in that Suit.

2 H. 6. 47.

6 H. 6. 86.

3 E. 4. 19.

6 H. 7. 12.

14 H. 6. 16.

10 E. 4. 12.

If a Man enter into any Lands and Tenements, and disseiseth another D with Force, and keepeth the Lands and Tenements and detaineth them with Force ; then he who is ousted and disseised may have that Writ, although the Words of the Statute are in the Disjunctive, *scil'*, Where a Man is disseised with Force, or where a Man doth disseise one peaceably, and afterwards doth keep the Lands with Force ; because the Intent of the Makers of the Statute was to punish such Force, whether it were upon the Entry and Disseisin, or upon the Keeping and Detaining of the Lands, &c.

8 E. 4. 19.

1 H. 7. 12.

4 E. 4. 18.

3 E. 4. 4.

37 H. 6. 31.

contr.

And note, That none can have or maintain that Action but he who E hath a Freehold in the Lands or Tenements at the least ; for Tenant for Years cannot maintain the Action, because the Words of the Writ are, *expulit & disseisivit* (c) ; and Tenant for Years cannot be disseised, &c. And the Form of the Writ is such :

*Rex Vic', &c. salutem. Si A. fecerit, &c. tunc pone B. &c. ad respon-* F  
*dend' tam nobis quam præfat' A. quare cum in Statuto in Parlamento apud*  
*Westmon' anno regni Regis H. nuper Regis Angliæ 6. progenitor' nostri 8.*  
*tento edit' inter cætera contineat', Quod si aliqua persona de aliquibus terris*  
*seu tenementis manu forti expulsa sit & disseis. vel pacifice expellat', & postea*  
*manu forti extrateneat', vel aliquod Feoffament' vel Discontinuatio inde post*  
*talem*

(a) Expulsed of his Rent. 20 H. 6. 11.  
*Vide ib. 47*

(b) See accordingly 14 H. 6. 32. 12 E.  
4. 1. and yet the Statute speaks only of  
Damages.

(c) Yet Note ; The Words in the Stat.  
are in the Disjunctive, *viz.* Expulsed ou  
Disseise. See Bro. *Acc'on. sur. Stat.* 17. And  
*Quære* if a Lessor may have this Writ,  
because he is not expulsed. *Dyer* 142.



*talem ingress. pro jure possessor' defraudando & tollend' aliquo modo fiat, habeat pars in hac parte gravata versus talem Diff. Assisam novæ diff. vel Breve de Transgr', & si pars gravata per Assisam vel per Action' Transgressi recuperet, & per Veredit' vel alio modo per debit' Legis formam inveniat' quod pars Def. in terr' & tenement' vi ingress. fuerit, vel ea, post ingressum suum per vim tenuerit, recuper' ; Querens damna sua ad triplum versus Def. & ulter' Finem & redemption' nobis faciat : Præd' B. præf. A. de Liber' tenemento suo in B. manu forti expulit & disseisivit, & cum sic expuls. & disseis. extratenet de eod' in nostri contemptum, & ipsius A. dampn' non modicum & gravam' ac contra formam Statuti prædict' & contra pacem nostram. Et habeas ibi nomina Plegior' & hoc Breve. Teste, &c.*

**G** And the Process in that Writ is Attachment and Distress, and Process of Utlagary, &c.

**H** If a Man entereth with Force into Lands and Tenements to which he hath Title and Right of Entry, and put the Tenant of the Freehold out of those Lands or Tenements ; now he who is so put out with Force shall not maintain an (a) Action of Forcible Entry against him who had Title or Right of Entry, because that that Entry is not any Disseisin of him ; but he may (b) indict him for this Entering by Force, and by this Indictment he shall be restored to his Possession again ; and that is by the Statute of 8 H. 6. c. 9. (c) And in this Action of [249.]

**A** Forcible Entry the Plaintiff shall recover treble Damages, as well for the Occupying of the Lands, as for the first Entry therein. And a Man **B** may have a Forcible Entry of a Rent, as well as of Lands.

And if a Man entereth and disseiseth another with Force, and afterward the Disseisee re-entereth again ; yet the Disseisee may bring his Action of Forcible Entry, and recover his treble Damages, although he be seised of the Land at the Time of the Action brought ; but if a Man continueth three Years in peaceable Possession, without Interruption, then he may hold the Lands with Force, and shall not be punished for that Force ; and by the same Statute.

And in the Writ of Forcible Entry, the Defendant may plead Not guilty, and it shall be a good Plea ; but if the Defendant doth plead Matter in Bar, yet he ought in the End of his Plea in Bar to traverse the Entry with Force, which is alledged ; as to say, *Abſque hoc* that he did enter with Force, &c. but yet the Demandant or Plaintiff ought to

C c c c

answer

(a) *Viz.* He shall not maintain it on the Stat. R. 2. See 9 H. 6. 19. but the Party shall make Fine to the King for his Forcible Entry. See 31 H. 6. 39. (17 H. 7. 17.) That if the Title be found for the Plaintiff or Defendant, they shall make Fine, &c. *Vide Post.* 249. D.

(b) *Note* ; On an Indictment of Forcible Entry found before Justices of Peace, and removed hither on the Statutes 5 Eliz. and 15. R. 2. The Party pleads as to the Entry with Force, Not guilty, and he was forced to answer to the Entry, wherefore

he justified the Entry. 7 H. 6. 13.

(c) See accordant *Dyer* 141. And *Note* ; He who is so restored, cannot maintain the Possession with Force, altho' he has had a peaceable Possession for 3 Years before the Expulsion. For the Possession is interrupted. See *Dyer* 187. None may grant Restitution but those Justices before whom the Force is found, and the Writ shall be under the Teste of one of them, and then no other Justices but those of B. R. can grant a *Superſedeas*.

answer the special Matter alledged in the Bar, without answering to the Traverse with Force, &c. (a).

17 H. 7. 17.

And if the special Matter alledged in the Bar be found for the Defendant, he shall be excused, and the Force shall (b) not be enquired of; and if it be found with the Plaintiff, and against the Defendant, the Defendant shall be attainted of the Force, and shall pay treble Damages and Costs, without Enquiry of the Force; and the same is the Usage at this Day. And one Joint-tenant, or Tenant in Common, may maintain this Action against his Companion, if he be put out with Force, &c.

And if a Man do enter with Force, and doth detain with Force any Lands or Tenements; the Party may have his Action upon the Statute of Northampton, made An. 2 E. 3. cap. 3. and the Writ shall be such:

*Rex Vic', &c. Quia datum est nobis intelligi, quod quamplurimi malefactores & pacis nostrae perturbatores in Conventiculis congregati, armati, & modo guerrino arraiati apud C. acceder', & clausum & domos quorund' ligo- rum nostrorum ibid' per vim & potentiam armat' intrar', & res, redditus & proventus, ac alia bona sua quaecunque de quibuscunque possessionibus suis ibidem provenient' capere consent' & asportare intendunt, & ad hoc parant, in nostri contempt' ac quorundam de populo nostro ibidem terrorem & commotionem manifestam, ac contra formam Statuti apud Northampton' de armis contra pacem Domini Ed' nuper Regis Angliæ tertii, progenit' nostri, non portand', editi, & contra pacem nostram: Nos, Statutum prædict' inviolabilit' observar' & idem infringentes juxta vim & effectum ejusdem Stat' castigari facere volentes & puniri, tibi præcipimus, quod apud Villam de C. & alibi in Com' tuo ubi necesse fuerit, publice proclam' & ex parte nostra firmit' inhiberi fa', ne quis, cujuscunque Stat' sive conditionis fuerit, ibidem armatus contra pacem nostram ac formam Stat' præd' accedat, nec armatam potent' nec quicquid aliud ibidem seu alibi fac', per quod Pax nostra seu Stat' præd' lædi, vel popul' noster terri, turbari, aut indebite gravari poterit quovis modo, sub pœna amissionis armorum suorum, & incarcerationem corporum suorum ad voluntatem nostram, prout in Stat' præd' plenius continetur. Et omnes illos quos post & contra Proclamation' & Inhibitionem præd' inveneris contraria facientes, vel per inquisitionem per te modo & form' debitis capiend' inveneris fecisse, una cum armis & armaturis suis secum invent' arrestar' & capi, & corpora ipsorum arrestator' in prisona nostra, quousque aliud a nobis pro deliberatione sua habueritis in mandat' salvo custodir', ac arma & armaturas prædict' appreciari, & nobis inde respond' fac'; Nos vero in Cancell' nostra sub sigillo tuo de nominibus arrestator' præd', ac de armis & armaturis suis & quæ & cujuscumodi fuerint, & de pretio vel de vero valore eorund' ac de toto facto tuo in hac parte, redd' distinct' & aperte sine dilation' certiores, hoc breve nobis remitt'. Teste, &c.*

Writ

(a) See where he maintained the Entry with Force, by Chacement. 9 H. 6. 19. 21 H. 6. 39.

(b) And so it is on an Indictment of

Forcible Entry. 7 H. 6. 13. Vide contr. where he pleads non est Ingressus contra Formam Statuti. 1 H. 7. 19. 15 H. 7. 17.



## Writ of Mainprise.

**G** **T**HE Writ of Mainprise lieth properly where a Man is taken for Suspicion of Felony, or indicted of Felony, for the which Thing by the Law he isailable, and he offereth sufficient Sureties unto the Sheriff or others who have Authority to bail him, and he or they do refuse for to let him to Bail; then he who is kept in Prison may sue forth such Writ:

*Rex Vic', &c. Ex parte R. capti & detenti in Gaola nostra Glouc' pro quodam Latrocinio cujusdam equi apud S. ut dicitur, facto, unde coram te per quand' Inquisitionem ex officio tuo captam indictatus est, ut dicit', nobis est ostensum, quod licet ipse tibi frequent' obtulerit suffic' Manuapt', qui eum manucaperent, juxta formam Statut' apud Westmon' dudum editi, in quo continetur, quod de hujusmodi Lacrocinis coram Vic' vel Ballivis per Inquisitiones ex officiis suis captas indictati replegiabiles sunt, dum tamen bonæ famæ sint; tu tamen Manuaptores illos a præfat' R. recipere, & ipsum per Manuaptionem hujusmodi a Gaola prædict' hucusque deliberare distulisti, & adhuc differs, in ipsius R. dispendium non modicum & gravamen & vitæ suæ periculum manifestum, & contra formam Stat' præd'; & quia nolumus quod idem R. in prisona præd' contra formam Statuti præd' diutius detineatur, Tibi præcipimus, quod si idem R. bonæ famæ sit, & per Inquisition' coram te ex officio tuo captam de Latrocinio præd' indictatus fuerit, ut præd' est, & pro eodem Latrocinio, & non alia occasione, in prisona prædict' detineatur, & invenerit tibi suffic' (a) Manuaptores, qui eum manucapere voluerint habere coram Justic' nostris ad Gaolam nostram prædict' deliberand' assignatis vel assignandis, in proxim' adventu eorund' pro Gaola illa deliberand' ad stand' recto de Latrocinio prædict' secundum Legem & consuetud' regni nostri Angliæ, tunc ipsum R. a prison' prædict' interim deliberari fac' per Manuaption' supradict' juxta formam Stat' prædicti; & habeas ibi nomina Manuaptor' illorum, & hoc Breve. Teste, &c.*

[250.]

- A** But note, That it is ousted by the Statute made *An. 28 E. 3. c. 4.* that the Sheriffs shall not take the Indictments by Writs or Commission
- B** directed unto them. And see the Statute of *Westm. cap. 15.* for those who shall be bailed.
- C** And if a Man be indicted of Felony before the Bailiffs of the Hundred, and put into the Gaol for the same, if he offer sufficient Sureties to the Bailiffs, and they will not bail him, then he who is imprisoned may have such a Writ unto the Sheriff thus.

*Rex Vic', &c. Ex parte I. nobis est ostens. ut cum ipse per quosd' æmulos suos de Latrocinio cujusdam bovis Ric', &c. apud R. facto, ut dic', coram Ball' F. de B. de Hundr' suo de P. per Inquisitionem ex officio eorund' Ball' captam, indictatus, & ea occasione captus, & in prisona nostra de D. detentus existat; & licet idem I. frequent' sibi obtulerit sufficien' Manuaptores,*

C c c c 2

qui

(a) Note; The Manuaptors are only to pay a Fine to the King. 11 H. 6. 31.

*qui eum manucaperent, juxta formam Statuti apud Westmon' dudum editi, in quo continetur, &c. ut supra. Tibi præcipimus, quod si idem I. bonæ famæ sit, & per Inquisitionem coram eisdem Ballivis ex officio suo captam de Latrocinio præd' indictatus fuerit, ut prædictum est, & pro eodem Latrocinio, &c. ut supra, &c.*

And there is another Writ for a Man who is taken for Suspicion of Felony, and kept in Prison ; and another Writ for him who is arrested and kept in Prison for Petty Larceny, &c. But this Clause shall then be put into the Writ, viz. *Si de aliis Latrocinis prius rectati non fuerint* : But this Clause, *dum tamen bonæ famæ sint*, shall not be put in that Writ, where it is sued for him who is taken for Petty Larceny.

And if a Man who is of good Fame be appelled by an Approver, D for which Cause he is arrested and kept in Prison ; then he may sue a Writ to the Sheriff, to let him be bailed upon good Sureties.

And so if a Man be appelled by an Approver, and be taken and kept in Prison, and afterwards the Approver dieth ; he may sue a Writ to the Sheriff to set him at Liberty upon sufficient Bail, if he be not a notorious Felon, although he be not a Man of good Fame.

Ant. 66.

And if a Man be indicted as Accessary to a Murder, as by his Assent E and Procurement, or Receipt, &c. or of aiding or counselling, &c. and be taken for the same, he may sue a Writ to the Sheriff to take Bail of him, until the Principals be convict or attainted, if they be of good Fame ; but the Statute of *Westm. cap. 15.* doth not speak so largely as the Writs in the Register do, for the Statute doth not speak of Commandment, Abetment, or Consent, &c.

And if a Man be taken by the King's Commission, and kept in Prison F for Felony, or evil Doing, he may by his Friends put in Sureties in the Chancery, that he will appear before the Justices, &c. and be of good Behaviour, &c. and that Body for Body ; and thereupon he shall have a Writ out of the Chancery upon the Sheriff, or unto the Constable of the Castle, where he is imprisoned, to set him at Liberty, if he be imprisoned for that Cause, and for no other.

Post. C.

And if a Man be indicted before Justices of Peace of Trespafs, and G imprisoned for the same by Process, he may sue a Writ out of the Chancery, directed to the Sheriff, to take Bail of him to appear before the Justices at the Sessions, and to set him at Liberty ; but the Justices of Peace may take Bail of him, and set him at Liberty, if they so please.

If a Man be indicted of Trespafs before the Justices of the Peace, H and put in Prison therefore, he may sue a *Certiorari* to remove the Judgment into the King's Bench, directed to the Justices of Peace, and a *Habeas Corpus* to the Gaoler, that he bring the Party at his Costs before the King in his Bench such a Day, &c.

And if a Man be indicted of Forestalling, and put in Prison for the I same, he may sue a Writ out of the Chancery to the Sheriffs, to take Bail of him to appear before the Justices, &c. to answer the Trespafs, and then to set him at Liberty.

Post. C.

And if a Man sueth a Writ of Error upon false Judgment given a K gainst him in any City or Borough, where he is condemned, and kept in



in Prison ; he may sue a Writ out of the Chancery, directed to the Mayor or Bayliffs of the City or Borough, to take Surety of him to answer what shall be due to the King and to the Party, if the Judgment be affirmed, commanding them for to set him at Liberty.

**L** And so if a Man sueth an Appeal of Maihem against another, and afterwards he is arrested at the Suit of the Defendant, or of another in any City or Borough, to the Intent that he may not sue his Appeal ; he may have a Writ out of the Chancery to the Bayliffs or Mayor, that he take Sureties of him to answer to the Party there, and that they set him at Liberty ; and all those Writs appear in the Register. [251.]

**A** And if a Man be appelled of Robbery, he may sue a Writ out of the Chancery to the Sheriff, that he take Sureties of him to appear before the Justices, &c. and that he set him at Liberty ; and if he have not arrested him, that he do not arrest him, if the Party offers to find such Sureties to the Sheriff, &c.

**B** And if a Man be sued in Debt or Trespafs, and be arrested by *Capias* or *Exigent*, and kept in Prison, he may sue a Writ to the Sheriff out of the Chancery, to take Bail of him to appear at a Day, &c. and that he set him at Liberty, &c. But now by the Statute made *Anno* 23 H. 6. every Sheriff is bounden to let to Bail every one in his Custody, who is arrested by Writ, Bill or Warrant, in any Action Personal, or upon Indictment of Trespafs, if they offer reasonable Sureties to appear at the Day, &c. in such Places where the Writ, Bill, &c. is returnable, &c. but Persons condemned, or outlawed, or excommunicated, or taken for Surety of the Peace, or Persons who are committed to Prison by the Commandment of any Justice, and Persons wandering who refuse to serve, who remain in the Custody of the Sheriff, all those Persons are excepted, for the Sheriff ought not to let such Persons to Bail. Ant. 238. D. 23 H. 6. c. 10. 33 H. 6.

**C** If a Man be condemned in Trespafs before Justices of the Peace, and be arrested and put into Prison in the Custody of the Sheriff, he may sue a Writ out of the Chancery to the Sheriff, that he take Bail of him, and set him at Liberty ; and also he may have a Writ directed to the Justices of the Peace, commanding them to take Bail of him, and set him at Liberty : Or if the Party do find Sureties in the Chancery to appear and stand right in Law, then he shall have a Writ directed to the Justices of Peace, or unto the Sheriff, to set him at Liberty. Ant. I.

**D** If a Man be bounden in a Statute-Merchant payable at a Day certain, and at the Day he pay Part of the Money, and hath a Release from the Conusee, of the Residue, if the Conusee sue Execution, and arrest the Party who hath the Release, then the Recognisor may sue in Chancery, &c. by his Friends, and find Sureties, Body for Body, that he shall appear such a Day in the King's Bench, and pay the (a) Money there, if he cannot otherwise be discharged ; and thereupon he shall

(a) And so in Account when the Defendant comes in by a *Capias ad computandum*, he shall find Sureties to keep his Day, i. e. to appear *De Die in Diem*, and to pay the Sum, if found against him. *11 H. 6. 31.* where they were at Issue before Auditors.

shall have a Writ to the Sheriff, reciting the whole Matter, and how he hath found Sureties in the Chancery, as is aforesaid, commanding him for to set him at Liberty ; and thereupon the Sheriff ought for to set him at Liberty ; and if he will not so do, he shall have an *Alias*, and a *Pluries*, and an Attachment against the Sheriff, &c.

And if a Man be condemned in any Court, and he is taken in Execution, and afterwards he is removed by a *Habeas Corpus*, or a *Certiorari* in Chancery ; he shall not be bailed, but shall be remanded to Prison, there to remain according to the Law, until he hath satisfied the Party Plaintiff, &c. *An. 2 H. 5. cap. 2.*

And two Justices of the Peace, whereof one is of the *Quorum*, may F let Men suspected of Felony, or other Persons who are bailable, to Bail, until the next General Sessions or Gaol-delivery : But the Justices of Peace are bound there to certify at the next General Sessions, or Gaol-delivery that Recognizance unto the Justices, &c. upon Pain of Forfeiture of 10 l. and that is by the Statute of 3 H. 7. cap. 3.

And he who is acquitted of Murder within the Year at the King's G Suit, shall not be released out of Prison until he find Sureties to appear at any Time the Justices will require him until the End of the Year, &c. because the Party may sue his Appeal after against him within the Year, &c.

And what Persons are bailable, and what not, appeareth by the H Statute of *Westm. 1. c. 15.*

And the Justices of Gaol-delivery may punish those who let Men to Bail, who are not bailable, by the Statute *de Finibus*, cap. 3.

And *An. 4 E. 3. cap. 2.* The Marshal of the King's House cannot I let those to Bail who are indicted or appelled of Felony, who are committed to them, &c. but the Justices of the King's Bench may punish them, &c. And *An. 5 E. 3. cap. 8.* they cannot let to Bail those who render themselves at the Exigent in Felony, and are committed to the Marshal, nor by Bailly nor Baston ; and if they do, they shall be imprisoned for Half a Year, and fined at the King's Pleasure.

### *Writ of Diem clausit extremum.*

T H E Writ of *Diem clausit extremum* properly lieth where the King's K Tenant, who holdeth of him *in Capite*, as of his Crown, by Knight's Service, or in Socage, dieth seised, his Heir within Age, or of full Age ; then that Writ ought to issue forth, and the same ought to be at the Suit of the Heir, &c. for upon that, when the Heir cometh of full Age, he ought for to sue Livery of his Lands out of the King's Hands ; and the Writ is such :

[252.] *Rex dilecti sibi W. de K. Eschactori suo in Com' Devon' salut'. Quia W. de S. qui de nobis tenuit in capite, Diem clausit extremum, ut accepimus ; Tibi precipimus, quod omnia terras & tenementa de quibus idem W. fuit seifitus in dominico suo ut de feodo in Balliva tua die quo obiit, sine dilacione*



*tionē cap' in manum nostram, & ea salvo custodiri fac', donec aliud inde præceperimus, & per sacramentum proborum & legal' hominum de Balliva tua, per quos rei veritas melius sciri poterit, diligent' inquiras, quantum terræ & tenementorum idem W. tenuit de nobis in capite, tam in dominico, quam servitiis, in Balliva tua die quo obiit, & quantum de aliis, & per quod servic' & quant' terræ & tenementa illa valent per annum in omnibus exitibus, & quo die idem W. obiit, & quis propinquior hæres ejus sit, & cujus ætatis, & inquisit' inde distincte & aperte fact' nobis in Cancellar' nostra sub sigillo tuo, & sigillis eor' per quos fact' fuerit, sine dilatione mittas, & hoc Breve. Teste, &c.*

4 Eliz. Dyer  
213. They  
shall be only  
of the Lands  
in Socage in  
Capite, and  
not of the  
Lands hold-  
en of other  
Lords.

- A** And if the King had a Ward, and afterwards one who holdeth of the said Ward his Lands by Knight's Service dieth, his Heir with Age, or of full Age; then a *Diem clausit extremum* after his Death shall issue in this Form :

Staundf. 13.  
Plo. Com.  
204.

*Rex dilect', &c. Quia I. de S. qui de hæred' W. de O. defuncti, qui de nobis tenuit in capite, infra ætatem & in custod' nostra existen', tenuit per servic' militare, Diem clausit extremum ut accepimus; Tibi præcipimus, quod omnia terras & tenementa, &c. & per sacramentum, &c. quantum terrarum & tenementorum idem I. ten' de hæred' præd', & quis propinquior hæres ejus sit, &c. ut supra.*

- B** And if the Heir dieth being in the Custody of the King, then shall issue another Writ of *Diem clausit extremum* in this Form :

*Rex, &c. Quia R. de H. filius & hæres I. de H. defuncti, qui de nobis tenuit in Capite, nuper dum infra ætatem & in custod' nostra fuit Diem clausit extremum, ut accepimus; Tibi præcipimus, quod per sacramentum, &c. inquiras, quæ terr' & quæ tenementa per mortem prædict' I. & ratione minoris ætatis hæredis prædict' I. ad manus nostras devener', & sic in manu nostra existunt, & quantum inde de nobis tenent in capite, & quantum de aliis, & per quod servitium, & quantum, &c.*

- C** And if the King's Tenant dieth who holdeth by Knight's Service, and his Wife be endowed, and the King hath the Wardship of the Lands for the Nonage of the Heir, and afterwards the Tenant in Dower dieth, the Lands being in Ward in the King's Hands; then a *Diem clausit extremum* shall be sued in this manner :

*Rex dilecto sibi N. de B. Majori Civitat' suæ London' & Eschaetori suo in eadem Civitate, salutem. Quia E. quæ fuit uxor I. de B. dudum defuncti, quæ quasdam terras & quædam tenementa de nobis tenuit in dotem de hæreditat' prædict' I. quondam viri sui, Diem clausit extremum, ut accepimus; Tibi præcipimus, quod omnia terras & tenementa quæ eadem E. sic tenuit in dotem de hæreditat' præd' I. in Balliva tua, &c. per sacrament', &c. diligent' inquiras, quas terras & tenementa eadem E. sic tenuit in dotem de hæred' in Balliva tua die quo obiit, & quantum inde de nobis tenet in capite, & quantum de aliis, & per quod servit', &c.*

- D** Otherwise after the Death of Tenant for Life of Lands, of which the King hath the Reversion in Ward :

*Quia A. qui quasdam terras & quædam tenementa de hæred' E. consanguin' & hæred' H. de P. defuncti, qui de Rege tenuit in capite, infra ætat' & in custodia Regis existent' tenuit ad terminum vitæ suæ, Diem clausit extremum,*

tremum, &c. *Tibi præcipimus, &c.* Or thus; *Quia A. qui quasdam terras & quædam tenementa de nobis tenuit per Legem Angl' de hæred' M. uxoris sue dudum defunctæ, Diem clausit extremum; Tibi præcipimus, &c.*

And if Tenant for Life, the Remainder to the King and his Heirs, F dieth, the King shall have a *Diem clausit extremum* in this manner :

*Quia A. quæ fuit uxor, &c. quasdam terras & quædam tenementa tenuit ad vitam suam, & quæ post mortem ipsius A. nobis & hæred' nostris remanere debent, Diem clausit extremum, &c. Tibi præcipimus, &c. quæ eadem sic tenuit, &c. & quæ post mortem, &c. remanere debent, &c.* Or thus; *post mortem præd' B. ad manus nostras ratione minoris ætat' præfat' hæred' deven', &c.*

And there are divers other Forms of Writs in the Register after the Death of Tenant for Life, or Tenant in Dower.

And if the King hath the Temporalities of the Bishop in his Hands, G and afterwards one who holdeth by Kinght's Service of those Temporalities dieth, his Heir in Ward to the King, then the *Diem clausit extremum* shall be in such Form :

*Rex, &c. Quia B. qui de Archiepiscopatu Cantuar' vacant' & in manu nostra existent' tenuit per servic' militare, Diem clausit extremum, &c. Tibi præcipimus, &c. de quibus idem A. fuit seiscitus in dominico suo ut de feodo, &c. & tenuit de Archiepiscopatu præd' sine dilatione, &c.*

And if the King hath an Ideot in his Custody, and afterwards the H Ideot dieth, the Writ of *Diem clausit, &c.* shall be thus :

*Rex, &c. Quia B. de C. nuper Fatuus & Idiota, cujus terræ & tenementa ratione Fatuitatis ejusdem in manu nostra existunt, Diem, &c. ut accepimus; Tibi præcipimus, quod per sacramentum, &c. diligent' inquiras quæ terræ & quæ tenementa ratione Fatuitatis prædict' B. in manum nostr' capta fuerunt, & adhuc in manu nostra existunt, & de quo vel de quibus tenentur, & per quod servitium, & quantum terræ illæ valent, &c. & quis propinquior, &c. & Inquisit', &c.*

And if a Writ of *Diem clausit extremum* be sent to the Escheator, and A the Escheator be removed from his Office, or dieth before he make the Enquiry, &c. then shall issue forth another Writ of *Diem clausit extremum*, which shall be such :

*Rex, &c. Cum nuper dat' nobis intelligi, quod I. de B. qui de nobis tenuit in capite, Diem clausit, &c. præceperimus dilecto nobis W. de O. nuper Eschaetori nostro in Com' prædict', quod omnia terras & tenementa, &c. (ut supra, mutatis mutandis) ac idem W. ab Offic' præd' jam sit amotus, per quod Executio brevis nostri præd' fieri non potest: Nos super præmiss. volentes certior' tibi præcipimus, quod per sacramentum, &c. diligent' super præmiss. fac' Inquisit' & eam distinge, &c. Teste, &c.*

And another Form of Writ in this Manner:

*Rex dilect', &c. Cum nuper dat' nobis intelligi, quod I. de B. qui de nobis tenuit in capite, Diem clausit, &c. præceperimus dilecto & fideli nostro H. de B. nuper Eschaetori nostro in eodem Com' quod omnes terras, &c. sine dilatione caperet in manum nostram, &c. donec aliud inde præcepissem', & per sacramentum, &c. inquireret quantum terræ, (ut in primo Brevi) ac idem H. antequam præd' Breve fuerat execut', ab Officio præd' fuerat amotus: Nos volentes*



volentes super præmiss. plenius certiorari, tibi præcipimus, quod super articulis prædictis & eorum singulis diligenter facias Inquisit' & eam distincte & aperte factam, &c. ut supra.

But if the first Escheator do make Inquiry by Force of the Writ, and afterwards dieth before the Inquisition be returned into the Chancery, &c. then a *Certiorari* shall be awarded against his Executors, to certify the same Inquisition; because it is a good Matter of Record (a) when it is found, and the Jurors have put their Seal unto the same.

**B** If the King's Tenant, who holdeth of him by Knight's Service, dieth, his Heir within Age, and no Writ is awarded within one Year after his Death, then, after the Year is past, a Writ called a *Mandamus* shall issue forth; and that Writ doth not vary in Words from the Writ of *Diem clausit extremum*; and the Writ is such:

Rex dilecto sibi W. de E. Eschaetori suo in Com' B. salut'. Præcipimus tibi, quod per sacramentum proborum & legal' hominum de Balliva tua, per quos, &c. diligenter inquiras quas terras & quæ tenementa I. de B. tenuit de nobis in capite, tam in dominico quam in servitio, in Balliva tua die quo obiit, & quantum de aliis & per quod servitium, & quant' terræ & tenementa illa valeant per annum in omnibus exitibus, & quo tempore idem I. obiit, & quis propinquior, &c. & cujus ætatis, & quis vel qui terras & tenementa illa a tempore mortis præd' I. occupavit vel occupaverunt, & exitus & proficua inde percepit vel perceperunt, & quo titulo, & qualiter, & quomodo, &c. & Inquisitionem, &c.

**C** And note, That if a Man sue a Writ of *Diem clausit extremum*, it ought to be sued within the Year, and after the Year (b) he shall have that Writ of *Mandamus*, and not a *Diem clausit extremum*. And if a Man sue forth a Writ of *Diem clausit extremum*, and he loseth the Writ, or the same is taken from him with Force against his Will, he shall not have a new *Diem clausit*, &c. But if he hath a *Diem clausit*, &c. and the Heir be found within Age, and that the King hath Title to him, because that his Ancestor held of the King at the Time of his Death by Knight's Service, and afterwards the Heir dieth being in Ward to the King, and no Writ of *Diem clausit extremum* within the Year after his Death; yet there a *Mandamus* shall not be awarded after the Year of the Death of the Ward, but a new Writ of *Diem clausit extremum* because the Heir died in Ward to the King; and that is by the Rule of the Register.

Stamf. 52.  
Vid. 1 Eliz.  
Dyer 170.  
5 E. 4. 13.

**D** Or if the King's Tenant who holdeth of the King by Knight's Service in chief dieth, the Heir may have a special Commission directed to certain Persons, to enquire what Lands, &c. his Father held the Day of his Death, &c. and that special Commission shall be as good for the Heir as a Writ of *Diem clausit extremum* after the Death of his Ancestor. And upon such Commission and Inquisition taken thereupon, and found and

Stamf. 52.

D d d d

returned

(a) But before the Indenting and the Ingrossing, and Setting of their Seals (although the Inquisition be taken and written in Paper) it is no Verdict; and there-

fore a *Supersedeas* then held well, &c. Dyer 170. See the Stat. 44 E. 3. c. 13.

(b) *Contra* if the Writ abates for false Latin, &c. 2 H. 6. 5.

returned in the Chancery, the Heir at full Age shall have his Livery as well as upon a Writ of *Diem clausit extremum* sued forth, &c. But upon a general Commission to enquire of all Wards, &c. the Law is otherwise; for the Heir upon such a Commission and Inquisition returned shall not have Livery.

When the Heir, who is in Ward to the King by Reason of Lands holden *in Capite*, cometh to his full Age, then he shall have a Writ directed to the Escheator, to prove his Age, before he shall have Livery of his Lands; and the Writ is such:

[254.] *Rex dilecto sibi I. de B. Eschaetori suo in Com' B. salut'. Quia A. de E. B. qui M. sororem & unam her' R. defuncti, qui de Domino Ed' nuper Rege Angliæ, Avo nostro tenuit in Capite, duxit in uxorem, dicit præf. M. plenæ ætatis esse, & petit a nobis terras & tenementa quæ sunt de hæreditate ipsius M. & quorum una pars in manu nostra, & alia pars in custod' I. de H. ex commissione dicti avi nostri, usque ad legitimam ætatem hered' ejusdem existunt, sibi reddend', per quod volumus quod eadem M. quæ apud G. in Com' N. nata est, & in Ecclesia ejusdem villæ baptizata fuit, ut dicitur, ætatem suam probet coram te: Tibi præcipimus, quod ad certos diem & locum, quos ad hoc provideris, probationem illam per sacramentum tam militum quam proborum & legalium hominum de Balliva tua, per quos probatio illa capi & veritas ætatis præd' M. melius sciri poterit & inquiri, capias, & scire fac' præf. I. quod tunc sit ibi, ad ostendend' si quid pro se habeat vel dicere sciat, quare præd' A. & præd' M. ut illi, quæ plenæ ætatis est, si plenæ ætatis sit, terras & tenementa præd' reddere non debeamus; & Probationem illam sic captam nobis sub sigillo tuo, & sigillis eorum per quos capta fuerit, sine dilatione mittas, & hoc Breve. Teste, &c.*

And by that Writ it appeareth, that the Writ of *Ætate probanda* shall be directed unto the Escheator of the County where the Heir was born, and not where the Lands of the Heir lie; but yet it seemeth reasonable that he may sue it where the Lands lie; for it may be that he was born where the King's Writ doth not run, or in Ireland, or beyond the Sea, as in *Calais*, &c.

There is another Form of Writ thus:

*Rex, &c. Quia M. de P. filius & hæres F. defuncti, qui de nobis tenuit in capite, dic' se plenæ ætatis esse, & petit a nobis terras & tenementa quæ sunt de hæreditate sua, & in custodia nostra usque ad legitimam ætatem hered' præd' sibi reddi, per quod volumus, &c. (usque ibi, melius sciri poterit & inquiri, capias, & tunc sic) Et probationem illam, &c. ut supra.*

There is another Form when the King committeth the Ward during his Nonage, then when he will sue an *Ætate probanda*, he ought to make Mention of the same Commitment.

And if a Man be in Ward unto the King by Reason of the Temporalities of a Bishoprick in the King's Hands, when the Heir cometh of full Age he ought for to sue forth an *Ætate probanda*; and the Writ shall mention the whole Matter; and yet he doth not hold of the King *in Capite*.

And when the Heir hath proved the Age, and the Writ is returned, then he ought to do his Homage to the King, or agree with the



the King for the Respiting of the Homage, and he shall have such Writ:

**B** Rex eidem Eschaetori, &c. Scias quod cepimus Homagium I. de H. filii & heredis B. de H. defuncti, de omnibus terris & tenementis quæ idem B. pater suus tenuit de nobis in capite die quo obiit, & ei terras & tenementa illa reddidimus: Et ideo tibi præcipimus, quod accepta Securitate a præfato I. de rationabili Releuio suo nobis solvendo ad Scaccarium nostrum, eidem I. de omnibus terris & tenementis prædictis, & de quibus præfatus B. pater suus fuit seist' in dominico suo ut de feodo in Balliva tua die quo obiit, & quæ occasione mort' ejusdem B. capta sunt in manum nostram, plenam Seisin' habere fac'; salvo jure cujuslibet, & salva Matildæ, quæ fuit uxor B. rationabili Dote sua, ipsum de terris & tenementis præd' secundum legem & cons. regni nostri Angliæ contingent', & per nos assignand'. Teste, &c.

**C** And the Writ aforesaid lieth, where the Heir was of full Age at the Time of the Death of his Ancestor, and sueth his Livery; but if the Heir were in Ward, and hath proved his Age, then he shall have a Writ thus:

Rex, &c. Quia N. de E. filius & hæ'r B. de C. defuncti, qui de Domino Edward' nuper Rege Angl', Avo nostro, tenuit in Capite, ætatem suam coram te sufficient' probavit, sicut per Probationem de mandato nostro captam & in Cancell' nostram retorn' est compertum; ceperimus Homagium ipsius N. de omnibus terris & tenementis quæ idem R. pater suus tenuit de dicto Avo nostro in capite die quo obiit, & ei terras & tenementa illa reddidimus: Et ideo tibi præcipim', quod eidem N. de omnibus terris & tenementis prædictis, & de quibus præd' R. pater suus fuit seistus in dominico suo ut de feodo in Balliva tua die quo obiit, & quæ per mortem ejusdem R. in manum dicti Avi nostri capta fuer', & in manu nostra sic capta existunt, plenam Seisin' habere fac' salvo jure cujuslibet. Teste, &c.

**D** (a) And if the Husband seised in Fee in Right of his Wife be outlawed of Felony, for which the Lands came into the King's Hands, and afterwards the Husband who is outlawed dieth; a Writ of Diem clausit extremum shall be awarded, which shall be such:

Quia A. cujus terr' & tenementa, quæ ipse tenuit de jure & hæreditate N. nuper uxoris suæ adhuc superstit', ad manus Domini Edward' nuper regis Angliæ quarti post Conquest', occasione cujusd' Utlagar' in ipsum A. pro quadam Felonia unde indictatus fuit, ut dicitur, promulgat', devener', & in manu Domini Henrici, &c. patris nostri, extiterunt, & sic in manu nostra existunt, Diem clausit extremum, &c. Tibi præcipimus, quod per sacramentum, &c. inquiras quæ terræ & quæ tenementa ration' Felon' præd' ad manus ipsius nuper Regis devener', & adhuc in manu nostra sic existunt, & de

D d d d 2

quo

(a) So one has no Entry, although the Estate of the King was determined, because the Possession of the King continues. Bro. Travers 48. 4 Aff. 4. 19 H. 6. 20. 22 E. 4. 3. and Pager's Case, 34 Eliz.

The Lessee for Life is attainted, the King seises, the Lessee dies, he in Reversion was put to his Monstr' de Droit, adjudged in Scaccario: And see accordant Lib.

Parl 287. Petitio T. Redman. Sec 8 Co. 170. Hale's Case. Tenant in Tail attainted of Treason, and all his Right given to the King, saving the Right of Entry of Strangers; the King's Estate determines after the Death of Tenant in Tail without Issue, without any Entry of the Donor, &c. Dyer 101. Sec 23 H. 6. Entry congeable 53.

quo vel de quibus tenentur, & per quod servitium, & qualiter, & quomodo, & quantum terr' & tenementa illa valent per ann' in omnibus exitibus, juxta verum valor' eorund', & quis vel qui terras & tenementa illa a tempore perpetrationis Felon' præd' occupavit vel occupaver', & exitus & proficua inde percepit vel percep', quo titulo, qualiter & quomodo: Et Inquisit', &c.

[255.]

## Qua plura.

Stamf. Præ-  
rog. 52.

THE Form of the Writ of *Qua plura* is such:

A

Rex Eschaetori suo, &c. salut'. Quia dat' est nobis intelligi quod A. defunct', qui de nobis tenuit in Capite, tenuit die quo obiit plura terr' & tenementa in Com' præd' quam in Inquisition ind' post mortem prædict' A. de mandato nostro capta, & in Cancellar' nostra retornat', specificantur: Tibi præcipim', quod per sacramentum proborum, &c. inquiras quæ plur' terras & tenementa idem A. tenuit in Com' prædict' die quo obiit, & de quo vel de quibus illa plura terr' & tenementa teneantur, & per quod servit', & quantum valeant per ann' in omnibus exitibus; & Inquisitionem, &c.

Stamf. Præ-  
rog. 52.

The Writ of *Melius inquirendo* lieth, where the first Office is found B by Virtue of a Writ of *Diem clausit extremum*, the which Office wanteth Certainty in divers Points, as in the Tenure of divers Lands, or in the Value of any of them, &c. then shall issue forth such Writ of *Melius inquirendo*: But if the first Office be found by the Escheator *virtute officii sui*, and not by Virtue of any Writ or Commission, and the Office wanteth Certainty in divers Things, as before; then a *Melius inquirendo* shall not issue forth, but the Office and Inquisition returned shall be as void, because it is not found by Virtue of any Commission or Writ, but only *ex officio* of the Escheator, without any Command to him to do the same; and therefore the same shall be taken as void, if it want Certainty in any Point.

4 E. 4 22,  
23.  
Bro. Office  
38.*Melius inquirendo.*

THE Form of the Writ of *Melius inquirendo* is such:

C

Rex Eschaet', &c. salut'. Cum per quandam inquisit' coram A. Eschaetore nostro in Com' præd' de mandat' nostro capt' & in cancell' nostra retornat', sit compert', quod N. defunctus tenuit divers. terras & tenement', cum pertin' in Com' præd', & quis propinquior hæres ejusdem N. sit ex parte patris sui Juratores Inquisitionis prædict' ignorant, tamen ex parte R. matris prædict' N. fil' W. B. est ejus hæres propinquior, & ætatis viginti unius an-

norum



*norum & amplius; & quia in (a) Inquisitione prædict' quis propinquior hæres ipsius N. existat minime specificat'; Tibi præcipimus, quod per sacrament', &c. inquiras quis propinquior hæ' præd' N. existit, qualiter & quomodo: Et Inquisitionem, &c.*

D There is another Form of Writ of *Melius inquirendo*, because he doth not specify in the Inquisition what Estate the Tenant had in the Lands; or because he doth not shew in the Office (b) of whom, or of who the Lands were holden; or because he doth not mention in the Writ the true Value, and the King is informed that the Lands are of greater Value than is certified by the Office. And note, That a *Melius inquirendo* shall be awarded upon a Surmise made in Court, that the Lands are of a greater yearly Value than is declared by the Office; and upon like Reason upon a Surmise made, that they are holden by other Services, or that the Tenant was seised of other Lands or other Estate than is mentioned in the Office, (c) a *Melius inquirendo* shall be awarded.

3 H. 6. 5, 8.  
Dyer 269.  
Kelw. 200.  
14 H. 7. 23.

Writ of Livery.

E THERE is another Form of Writ of Livery, where the King's Tenant *in Capite* dieth, his Heir within Age, and the King seifeth the Ward, and afterwards that Heir dieth within Age, and in Ward to the King, for which the Lands come unto his Heir who is within Age, and in Ward to the King; now when that Heir cometh of full Age, he shall have a Writ of Livery in this Form:

*Rex dilecto, &c. Eschaetori suo in Com' I. salut'. Quia I. frater & hæ' S. filii & hæ' I. S. defuncti, qui de nobis ut de Honore H. in manu nostra existent', tenuit per servic', reddend ad Wardam Castri Dover' decem solid' per annum, etatem suam cor' Roger' de W. nuper Eschaet' nostr' in Com' præd', suffic' probavit, sicut per Probat' illam de mandato nostro capt', & in Cancell' nostram retorn', est compertum; cepimus Homagium & Fidelitatem ipsius I. fratris S. de omnibus terris & tenem' quæ præd' I. S. pat' tenuit de nobis ut de Honore pd' die quo obiit, & quæ post mortem præd' I. S. patris, & ratione minoris ætatis ipsius S. qui quidem S. dum infra ætatem & in custodia nostra fuit diem clausit extremum, ad manus nostras devener' debet', & eidem I. fratri S. omnia terr' & tenem' illa cum pertin' reddidimus. Et ideo tibi præcipimus, quod eidem I. fratri S. de omnibus terris & tenem' prædict' cum pertin', & de quibus præd' I. S. pater fuit seisit' in dominico suo ut de feodo in Ball' tua die quo obiit, & quæ per mortem ipsius S. patris, & ratione minoris ætatis ipsius S. ad manus nostras devener', & sic in manu nostra*

(a) So if it be found by the *Diem clausit extremum*, that *J. S.* died seised, and that the Lands descended to *T.* as Son and Heir, and does not shew of what Estate he died seised. 3 H. 6. 5.

(b) In such Case before the Statute 2 E.

6. c. 8. it should be taken to be held of the King in Chief. Dyer 144. See 2 H. 7. 18.

(c) See Cap. 168 The King shall not have a new *Melius inquirend'* after a former (returned, &c.) And note, this Writ shall not issue where the first Writ was sufficient, though not (executed). 7 Eliz. Q. 25.

*fra ratione minoris etat' ejusdem I. fratris S. adhuc existunt, plenam Seisnam habere fac', salvo jure cuiuslibet. Teste, &c.*

[256.]

And when an Heir shall have Livery at his full Age, and holdeth one Manor *in Capite* of the King by Knight's Service, and holdeth other Lands in several Counties of others, then a Writ shall issue to the Escheator of the County where he holdeth *in Capite*; and the Form shall be such: *Scias quod cepimus Homagium, &c.* And the Writs to other Escheators being thus: *Cum ceperimus Homagium, &c.*

21 E. 3. 41.  
ac. Of the  
Honour of  
Berkhamstead.  
So 29 H. 8. 24.

And it appeareth by the Writ before, that to hold Land (a) to render a certain Rent for the guarding of the Castle of *Dover* shall be a Tenure *in Capite*, and by Knight's Service; and it may be that in ancient Time he should guard the Castle, and that now the King hath taken the Rent for the same, and yet the Taking of the Rent doth not alter the Nature of the Tenure. *Quære.*

If two Men by License purchase Lands holden of the King *in Capite*, and afterwards one of them dieth, the other shall have the Lands (b) *cum exitibus* out of the King's Hands, upon the Matter found by Inquest; but by the Register he ought to shew the License in the Chancery. 39 E. 3. 21.

4 Eliz. Dyer  
213. rule ac.  
Plow. Com.  
109, 204.  
20 Eliz.  
Dyer 362.

And if the King's Tenant who holdeth in Socage dieth, his Heir of the Age of fourteen Years and more, and the King seiseth the Lands, he ought for to sue Livery of them. But it seemeth the King ought not for to seise the other Lands which he holdeth of other Lords by other Services, &c. and if he do, the other Lords shall have a Writ of *Amoveas manum*, which is called an *Ouster le main, una cum exitibus*, &c. so as they shall have (c) the Issues and Profits thereof which were taken by the King, and the Form of the Writ is such:

*Rex dilecto sibi A. Eschaetori suo, &c. Quia accepimus per Inquisit' quam per te fieri fecimus, quod I. de T. defunctus tenuit in dominico suo ut de feodo, die quo obiit, unum mesuagium & unam bovata' terrae cum pertin' in K. de nobis in Capite, ut de Honore Abbatiae Mariae in manu nostra existent', per fidelitatem & per servitium trium solidorum & novem denar' nobis annuatim reddend', & quod non tenuit aliqua alia terras & tenementa de nobis in Capite ut de Corona in Balliva tua die quo obiit, per quod custod' terr' & tenement' quae fuer' praed' I. die praed' ad nos ad praes. debet pertin', & quod tenuit die praedict' divers. alias terras & tenementa de diversis dominis*  
pro

(a) See a Tenure of the Honour of *Bo-logn*, no Tenure in Chief, and therefore the Land was delivered to the Lords. *Rot. Claus.* 2 E. 1. M. 6. and so of the Honour of *Peverell*. *Rot. Claus.* 4 E. 1. M. 16. and *Rot. Claus.* 3 E. 1. M. 11. See *Stamf. Prerog.* 12. 29. b. *Ant.* 175. *Bro. Livery* 58. 44 *Aff.* 35. 18 E. 3. 22.

(b) Yet see 18 E. 3. 21. If the King's Tenant aliens with License to A. for Life, Remainder to B. in Fee, and A. dies: Now the King has Cause to seise till B. has done his Services, and therefore he shall

not have an *Ouster le main, cum exitibus*, except *de gratia*.

(c) *Sed nota*; *Nomine exituum* are not such Profits for which the Escheator has accounted and paid into the Exchequer; nor Wards happening and seised, per *Willy*; nor Amerciaments levied; nor an Avoidance of a Church. 18 E. 3. 22. 24 E. 3. 29. 39 E. 3. 21. and yet such Issues for which the Excheator has only accounted, but not paid, are restored. 24 E. 3. 60.

See *Stamf. Prerog.* 13. b. *Mag. Char. Gard* 3. 38 H. 6. 8. *Livery* 60. 12 H. 8. *Gard* 77.



*pro divers. servic' ; quodque N. filius pd' I. est hær' ejus propinquior, & ætatis sexdecim annorum & amplius ; cepimus fidelitatem ipsius N. de mes. & terris præd' & ea ei reddidimus. Ideo tibi præc' quod, accepta Securitate a præf. N. de rationabili Relevio suo nobis solvend' ad Scaccarium nostrum, eidem N. de mesuag' & terr' prædict', quæ occasione mortis ipsius I. cepisti in manum nostram, plenam Seisinam habere facias, salvo jure cujuslibet : De aliis vero terris & tenementis, quæ præfatus I. tenuit de aliis dominis in Balliva tua die quo obiit, quæ similiter ea occasione mortis prædict' I. cepisti in manum nostram, te ulterius non intromittas, salvo jure nostro & alterius cujuscunque, & exitus, si quos de terris & tenement', quæ de aliis dominis sic tenent' perceiveris, illis ad quos pertinent liberos.*

And by this Writ it appeareth, that the Heir in Socage being of full Age at the Time of the Death of his Ancestor shall have *Livery cum exitibus* ; but if he were within the Age of fourteen Years at the Time of his Ancestor's Death, his *Prochien amies* must sue an *Ouster le main cum exitibus* : But the other Lords shall have an *Ouster le main* for the Lands holden of them by Knight's Service *cum exitibus*.

Ant. L. 35  
H. 6. 52.  
45 E. 3.  
Stamf. Præ-  
rog. 13.  
45 E. 3. 19.  
35 H. 6. 52.  
Stamf. Præ-  
rog. 13.

**D** And if the King hath the Custody of an Idiot, and of his Lands which are holden of the King *in Capite*, and the Idiot dieth, and his Heir be of full Age ; the Heir shall have a Writ of Livery in this Form :

*Rex Eschaetori, &c. Quia accepimus per Inquisit' quam per te fieri fecim' quod diversa terr' & tenementa cum pertin' in O. in manum domini Ed' quondam Regis Angl' avi nostri, ration' Fatuitatis & Idiot. W. de P. jam defuncti capta fuer' & in manu nostra sic existunt, & quod eadem terr' & tenement' tenentur de nobis in capite, ut de Honore Abbatie Mariæ in manu nostra existent' per servitium octavæ partis unius feodi milit', & sac' Sect' ad Wapentag' nostrum de Holdernef. de tribus septiman' in tres, ac reddendo ad Wardam Castri nostri de Skipton ad medium Quadragesim' decem & septem denarios ; quodque Galfridus, filius Will' de Redmain consanguineus præd' Will' est hær'es ejusdem Will' propinquior, & plenæ ætatis ; cepimus Fidelitatem ejusdem Galfrid' de omnibus terr' & ten' præd', & illa ei reddidimus, ac Homag' ejusdem Galfrid' usque ad Festum Paschæ proxim' futur' de gratia nostra speciali respectuamus : Et ideo tibi præcipimus, quod accepta Securitate a præfat' G. de rationabil' Relevio suo nobis reddend' ad Scaccar' nostrum, eidem G. de omnibus terris & tenement' præd' in manu nostra exist' plenam Seisin' habere fac', salvo jure cujuslibet. Teste, &c.*

**E** And when the Heir in Ward unto the King is of full Age, he shall have a Writ out of the Chancery unto the Keeper of the Privy Seal, testifying that he is of full Age ; and thereupon he shall have a Privy Seal unto the King's Chamberlain to receive his Homage : And when he hath taken his Homage, he shall have a Writ from the Chamberlain to the Chancellor, testifying that he hath taken his Homage ; and thereupon he shall have a Writ of Livery. And all this Matter appeareth at large in the Abridgments, in the Title *Livery*, which see there.

And

Stamf. Præ-  
rog. 80, 84.  
Bro. Livery  
69. 35 H. 6.  
Livery 15.

And if three Coparceners be in Ward to the King, the Coparceners who first cometh of Age shall sue Livery, and shall have Partition made thereupon.

And if an Heir Female be in Ward to the King, and holdeth of other Lords in Socage; now when she cometh of the Age of fourteen Years she shall not sue Livery of the Lands holden in Socage, but she shall tarry until her Age of sixteen Years, if she be not married before that Age, for she shall sue Livery but once for all her Lands, &c.

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Stamf. Præ-  
rog. 80.

And if the Heir of full Age sue his Livery, and omitteth any Parcel of his Inheritance, as an Advowson, or a Reversion, or one Acre of Lands which is not found by the Writ of *Diem clausit extremum*, and thereupon sueth his Livery; if it be found afterwards by another Office, that his Ancestor died seised of that Advowson, Reversion, or Acre of Land, which was not found by the first Office upon which he sued his Livery before, then the King may reseise all the Lands, &c. and the Heir shall answer the King for all the Rents, Issues and Profits received in the mean Time by the Heir, &c.

If the King's Tenant holdeth by Knight's Service and *in Capite*, and also holdeth other Lands of the Archbishop of Canterbury by Knight's Service, and dieth seised, his Heir within Age; the King shall have the Lands holden of him in Ward, and the Archbishop shall have the other Lands holden of him in Ward: And that is by the Statute of *Prærogativa Regis*, c. 1. And if the King seiseth all the Lands, the Archbishop shall have an *Ouster le main cum exitibus*.

Stamf. Præ-  
rog. 12. b.

And if the King's Tenant who holdeth *in Capite* and by Knight's Service, dieth seised, and a Stranger doth abate, for which the Heir at full Age recovereth by Assise of *Mordancester*; yet he ought for to sue his Livery, and to do his Homage, and the Abator shall answer the King the mean Profits and Issues received. And the Writ of *Ætate probanda* may be directed to certain Commissioners to enquire of the Age of the Infant, as well as unto the Escheator; and the Form of the Commission is such:

Stamf. Præ-  
rog. 8.

### Commission pro Ætate probanda.

**R**EX dilectis, &c. Sciatis quod assignavimus vos ad inquirend' per sacrament' tam militum quam aliorum proborum & legal' hominum de visu' de N. in Com' Linc', si I. filius & hæres B. apud N. natus, & in Ecclesia ejusdem Ville baptizatus, & qui ratione minoris ætatis suæ in custodia nostra existit, plen' ætatis sit, ut dicit, necne. Et ideo vobis mandamus, quod ad certos diem & locum, quos ad hoc provideritis, Inquisitionem illam faciatis, & illam distincte & aperte fact' nobis in Canc' sine dilatione mittatis & hoc Breve. Mandavimus enim Vic' nostro Linc', quod ad diem & locum quos ei scir' fac' venire fac', &c. In cujus rei testimonium, &c. And thereupon a Writ



Writ shall be sent to the Sheriff to return an Impanel before the Commissioners at a certain Day by them appointed. And the Writ shall be such:

*Rex Vic', &c. Præcipimus tibi, quod sum' per bonos Sum' xii. tam milites quam alios probos & legales homines de visn' de N. quod sint coram dilectis & fidelibus nostris A. B. & C. & hiis quos sibi associavimus, ad certos diem & locum quos iidem A. B. & C. tibi scire faciant, parati sacramento recognoscer', si F. filius & hæres D. apud N. natus, & in Eccles. ejusdem Vill' baptizatus, qui ratione minoris ætat' suæ in custodia nostra existit, plenæ ætatis sit, ut dicit, necne; & interim ad præd' Eccles. & Villam accedant, & veritatem ætatis præd' F. diligent' inquirent, & nomina eorum imbrevariari fac'. Et scire fac' E. & S. custodibus (a) terræ præd' hæredis, quod tunc sint ibi ad audiend' illam recogn', & ad ostendend', si quid obstare debeat quar' præd' I. terras & tenementa sua habere non debeat; & habeas ibi nomina illorum duodecim, & hoc Breve. Teste, &c.*

**E** And thereby it appeareth, that if the King hath committed the Wardship of the Land unto another, that the Committee shall be warned to be there; but if the King hath the Lands in his own Hands, then that Clause, *Et scire facias* E. & S. Custodibus, &c. shall be omitted out of the Writ.

**F** And by the Rule of the Register, a Woman shall do Homage and Fealty, and shall pay a Relief when she sueth her Livery, if she be of full Age at the Time of the Death of her Ancestors; and if she hath a Husband, if they have Issue when they sue Livery, then the Husband shall do the Homage and Fealty; but if they have no Issue, then the Husband shall do only Fealty (b).

**G** And if two Jointenants be, who hold of the King by License of Purchase, and one of them dieth, the other shall have an *Ouster le main cum exitibus*: But if the Purchase be made without Licence, then not, because that the King shall seise the Lands for the Alienation without License.

E e e e

And

(a) So the Grantees of a Ward are made Parties; but see 43 E. 3. 20. Where a *Sci' fa'* issued after the Return of the Commission against the Grantee, to shew why he should not have Livery; and the Grantee came and pleaded that the Value of the Marriage was not satisfied to him, and pray'd that he might hold the Land till he were satisfied, and the Heir did not deny the Plea, but went out of Court, and thereon the Grantee held the Land two Years, and then issued a *Scire facias* for the Heir against him, to have the Land; the Grantee pleads, that the Land was seised into the King's Hands, for that the Heir had not done his Homage, and the Verdict found that the Ward was leased by the King to the Grantee, rendring a Rent, and seised for the Non-payment;

and after this, notwithstanding, the Grantee sued a *valorem Maritag'* against the Heir, and adjudged that it lay: For seeing the Heir was found of full Age, he ought to have had Livery instantly, though the Value of the Marriage was not satisfied without any *Scire facias* sued against the Grantee; and after Livery sued, the Grantee has his Remedy for the Value of the Marriage, by ——— or Action; and therefore till Livery sued, the Profits shall be to the King, and not set by Way of Recompence for the Value of the Marriage. See 10 H. 6. 20.

(b) Note; Bro. Fealty 10 E. 16. Where it is said that Feme Covert shall not do Services, but her Husband for her; and therefore until Issue had between them, the Homage is suspended. See Litt. 18, 19.

And if the King's Tenant hath Lands in several Counties, some holden of the King, and some of other Lords, the Writ of Livery shall be directed unto the Escheator of that County where the Land which he holdeth of the King *in Capite* lieth, and the Writ shall begin, *Scias quod cepimus Homagium*, &c. and he shall have Writs unto the Escheators of the other Counties, and the Writ shall begin thus, *Cum ceperimus*, &c.

*Writ of Livery post mortem Patris & Matris.*

**W**RIT of Livery after the Death of the Father and Mother, &c. lieth where the Father and Mother hold severally Lands in Fee of the King *in Capite*, and they die, their Heir of full Age, he may sue any Writ of Livery to have Livery of the Lands of them both, and is not bounden to sue several Writs, as severally Heir to them. And the Form of the Writ is,

[258.] *Rex dilect' sibi N. de W. Eschaet' suo in Comit' S. salut'. Sciatis quod cepimus Homagium, & Fidel' R. de B. filii & haered' R. de B. che'r & I. uxoris ejus defunct', nobis debita pro omnibus terris & ten'tis quæ præf. R. & I. tenuerunt de nobis in capite diebus quibus obierunt, & ei terras & ten'ta illa cum pertin' reddidimus: Et ideo tibi præcipimus, quod accepta Securitate de præf. R. de ration' Relevio suo nobis solvend' ad Scacc' nostrum, eidem R. de omnibus terris & ten'tis præd' cum pertin' in Ball' tua, & de quibus præd' R. & I. fuer' seisiti in dominico suo ut de feod' in Ball' tua dieb' quib' obierunt, & quæ post mortem præd' R. & I. capta sunt in manum nostram, plen' Seisin' habere fac' salvo jure cujuslibet. Teste, &c.*

*Writ of Livery after the Death of Tenant by the Curtesy.*

**T**H E R E is another Form of Writ, (a) after the Death of Tenant by the Curtesy thus:

*Rex dilect' sibi Eschaet' suo in Com' Linc', &c. Sciatis quod cepimus A Homag' G. de N. filii I. de N. defuncti, de omnibus terris & ten'tis quæ idem I. tenuit per Legem Angl' die quo obiit, ut de jure N. nuper uxor' ejus jam defunctæ, quæ de nobis tenuit in capite, matris præd' G. cujus hæ'r ipse est, nobis debet, & terras & tenementa illa ei reddidimus: Et ideo tibi præcipimus, quod accepta Securitate ab eodem G. de Relevio suo nobis solvend' ad*



*ad Scaccarium nostrum, eidem G. de omnibus terris & tenementis præd' cum pertin' quæ per mortem prædict' I. capta sunt in manum nostram, plenam Seisinam habere fac' salvo jure cujuslibet, Teste, &c.*

(a) And thereby it appeareth, that the Tenant by the Curtesy shall have the Lands after the Death of his Wife, without suing an Ouster le main for those Lands holden of the King, but that the Heir after his Death shall sue his Livery for them, &c. because that the Tenant by the Curtesy doth remain Tenant to the King.

And if a Man have Lands which are held of the King *in Capite* by the Curtesy, and he hath Lands in Fee, and dieth; his Heir shall sue Livery as well for the Lands whereof the Tenant was seised in Fee, as for the Lands which he held by the Curtesy, although the Lands of which the Tenant by the Curtesy was seised in Fee were not holden of the King *in Capite*, &c. because that as well those Lands are seised into the King's Hands, as the Lands which he held by the Curtesy; and the Writ shall be such:

*Rex dilecto sibi, &c. Eschaet' in Com' Eborac' salutem. Scias quod cepimus Homag' & Fidel' G. filii & hæredis W. de S. & I. que fuit uxor ejusdem W. de S. defunctor', de omnibus terris & tenementis quæ præd' W. de S. pater suus tenuit tam per Legem Angl' de hæreditate prædict' I. quond' uxoris suæ post mortem ipsius I. quam in dominico suo ut de feodo die quo obiit, & ei terras & tenementa illa reddidimus: Et ideo tibi præcipimus quod accepta Securitate a præf. G. filio W. de rationabili Relevio suo nobis solvend' ad Scaccarium nostr', eidem G. filio W. de S. de omnibus terris & tenementis prædict' cum pertin', & quæ prædict' W. de S. pater suus tenuit tam per Legem Angl' post mortem prædict' I. quond' uxoris suæ, quam in dominico suo ut de feodo in Ball' tua die quo obiit, & quæ post mortem ipsius W. de S. capta sunt in manum nostram, Seisinam habere fac', salvo jure cujuslibet. Teste, &c.*

And if the King's Tenant dieth, and after his Death his Wife be endowed, then after the Death of the Tenant in Dower, the Lands which she held in Dower shall be seised into the King's Hands, and the Heir shall sue Livery of them; and the Writ shall be such:

7 H. 6. 3.  
Stamf. Præ-  
rog. 13. a.

## Writ of Livery after the Death of the Tenant in Dower.

**R**EX dilecto sibi T. de S. Eschaetori suo in Com' Ebor', salutem. Scias quod cepimus Homagium & Fidelitatem dilecti & fidelis nostri R. Baron' de F. nobis pro omnibus terris & tenementis quæ A. quæ fuit uxor R. de N. quondam uxor R. nuper Baronis de F. post mortem prædict' R. nuper Baronis de F. primi viri ipsius A. avi ipsius R. nunc Baronis de F. de nobis tenuit

E e e e z

(a) A. takes B. to Wife, to whom Lands very, and after Issue had, A. sues Livery. *in Capite* descend, and she dies before Li- Dyer 229.

*nuit in capite die quo obiit, debet, & ei terras & tenementa illa cum pertin' reddidimus: Et ideo tibi præcipimus, quod accepta Securitate a præf. R. nunc Baron' de F. de rationali Relevio nobis solvend' ad Scaccarium nostrum, eidem R. nunc Baroni de F. de omnibus terris & tenementis prædict' cum pertin' quæ præfat' A. ten' in dotem post mortem præd' R. viri sui, avi præd' nunc Baron', de hæreditate præd' in Ball' tua die quo obiit, & quæ post mortem præd' A. accept' sunt in manum nostram, plenam Seisinam habere fac', salvo jure cujuslibet. Teste, &c.*

Stamf. Præ-  
rog. 13. a.

And by that it appeareth, that Tenant in Dower who is endowed in the Chancery, &c. of Lands holden of the King *in Capite*, or of other Lands which are in the King's Hands by the Death of his Tenant, that she shall hold them of the King, and the Heir shall have Livery of those Lands after her Death; yet it seemeth that the Reversion of those Lands which she holdeth in Dower remaineth not in the King, but in the Heir; and if she commit Waste, the Heir shall punish the Waste.

There is another Form of Writ of Livery, after the Death of the King's Tenant, who holdeth Parcel in Fee, or Parcel in Tail, or for Life, thus:

### *Writ of Livery after the Death of Tenant in Tail and Tenant for Life.*

[259.] **R**E X dilect', &c. Eschaetori suo in Com' Salop' & March' Walliæ eidem Com adjacent', salutem. Quia cepimus Homag' & Fidelitat' dilecti & fidelis nostri I. de B. filii & hæred' I. de B. senioris, de omnibus terris & tenementis cum pertin' quæ idem I. tenuit de nobis in capite, tam in feodo quam ad termin' vitæ, die quo obiit, & quæ post mort' dicti I. patris dicto I. filio pertin', descendere, vel eid' I. filio & S. ux' ejus & hæred' de corpor' suis exeuntibus debeat aliqualit' reman', & ei terras & tenementa illa reddidimus: Ideo tibi præcipimus, quod accepta Securitate a præf. I. de rationali Relevio suo nobis solvend' ad Scaccar' nostrum, eidem I. filio de omnibus terris & tenement' præd' cum pertin', & de quibus præd' I. pater suus fuit seisit' in dominico suo ut de feodo talliato, quorum Reversio ad dict' I. filium pertinet, in Balliva tua die quo obiit, & quæ per mort' ejusd' patris sui capta sunt in manum nostram, plenam Seisinam habere facias, salvo jure cujuslibet. Teste, &c.

And if Tenant in Tail holdeth of the King *in Capite*, and dieth, the Heir then of full Age, he shall have such Writ of Livery.

*Writ*



## *Writ of Livery for the Heir in Tail.*

**A** **R**EX, &c. Scias quod cepimus Homag' & Fidelitat' dilect' nobis W. &c. filii & hæredis W. de B. defuncti, de omnibus terris & tenementis quæ præd' W. pater suus sibi & hæ'r' suis de corp' suo exeunt', ex dono & concessione W. de S. per Finem inde in Cur' nostra de licent' nostra levat' de nobis in capite die obitus sui tenuit, & terras & tenementa illa ei reddidimus: Et ideo tibi præcipimus, quod accepta Securitate a præfat' W. &c.

And if the King's Tenant holdeth by Petit Serjeanty, and dieth, and his Heir be within Age of eighteen Years, then he shall have a Writ to have Seisin of the Lands, thus:

## *Writ of Livery for Lands by Petit Serjeanty.*

**B** **R**EX dilecto, &c. Eschaet' suo in Com' Suff. salutem. Quia accepim' per Inquisition' quam per te fieri fecimus, quod T. P. defunctus tenuit in dominico suo ut de feodo die quo obiit decem mesuag', centum acr' terræ, quadraginta acr' prati, & decem acr' pasturæ, tiginta acr' moræ, ac viginti solid' reddit' cum pertin', in W. in Com' præd', de nobis in Capite, per servitium viginti solid' nob' ad Manerium de L. annuatim solvend' pro omni servitio, & quod non tenuit aliqua alia terr' seu tenementa in dominico suo ut de feodo de nobis, nec de aliis, in Com' præd' die quo obiit, & quod W. filius præd' T. est hæres ejusd' T. propinquior & ætatis decem & octo annor' & amplius; Tibi præcipimus, quod capta Fidelitate ipsius W. juxta form' cujusd' schedulæ præsentibus interclusæ, & accepta Securitate ab eod' W. de rationabili Relevio suo nobis solvend' ad Scaccar' nostrum, eid' W. de mesuag', terra, pratis, mora & redditu præd' cum pertin', quæ per mort' præd' T. capta sunt in manum nostram, plenam Seisinam habere fac', salvo jure cujuslibet. Teste, &c.

And thereby it appeareth that the Heir in Socage shall not have Livery cum exitibus, &c. if he pass the Age of fourteen Years; but within the Age of fourteen Years he shall have Livery cum exitibus, &c. and the same is holden for a Difference at this Day.

**C** The King's Tenant hath Issue a Son D. de B. and two Daughters, and dieth; and the said D. de B. hath Livery, and afterwards hath Issue a Son H. de B. and dieth, the said H. being in Ward to the King for his Nonage, and afterwards one Sister hath Issue a Son and dieth, and afterwards H. dieth being in Ward to the King, and his Aunt and the Son of the other Sister, being of full Age, sue to have Livery: Now they ought to have a Writ directed to the Escheator, by which it shall be commanded to the Escheator to make Livery to them, and to make

Partition

Stamf. Præ-  
rog. 24. b.

Partition between them of those Lands which are in the King's Hands, so as each Coparcener shall have Part of the Lands which are holden of the King *in Capite*; and the Writ shall be such:

*Writ of Livery for the Aunt and Niece to make Partition.*

**R**EX dilecto sibi A. de H. Eschaet' suo in Com', &c. salutem. Scias quod cepimus Homagium & Fidelitat' tam de D. de B. filio A. de B. unius soror' D. de B. quam de T. de B. alter' soror' præd' D. de B. consanguin' & hæred' H. de B. filii & hæ' prædict' D. de B. defunct', qu' de nobis tenuit in Capite, nobis, pro omnibus terris & tenem' quæ præd' D. de B. tenuit in capite, quæ per mort' præd' D. de B. & ratione minoris ætatis H. filii & hæ' ejusd' D. de B. qui quidem H. dum infra ætat' & in custod' nostra fuit Diem clausit extremum, ad manus nostras devener', debita, & eisd' D. de B. & T. terr' & tenement' præd' reddidimus; & ideo tibi præcipimus, quod accepta Securitate a præf. D. de B. & T. de rationalibus Releviis suis nobis solvend' ad Scaccar' nostrum, factaque legali partitione omnium terrarum & tenemen' cum pertin' in Balliva tua, quæ per mort' prædict' D. de B. & ratione minoris ætatis prædict' H. ad manus nostras devener', & in manu nostra adhuc existunt, juxta Extent' inde factam, vel aliam si necesse fuerit iterato faciend', in duas partes æqual' in præsent' prædict' D. de B. & T. vel Attorn' suorum in hac parte præmunier' si interesse voluerint, eisd' D. de B. & T. de partibus suis, ipsis inde juxta partition' ill' secundum Legem & consuetud' regni nostri Angl' contingent', plenam Seisinam habere fac', salvo jure cujuslib'. Proviso semper, quod uterq; præd' D. de B. & T. partem terr' & tenem' quæ de nobis tenent in capite, & purpartem suam habeat, & tenens noster existat cum pertin' ill', &c. Teste, &c.

[260.]

Stamf. Præ-  
rog. 18 & 52.

And if a Man and his Wife hold a Manor of the King *in Capite* in Tail, and die, and have Issue two Sons, and the younger Son is found Heir by Virtue of a Writ of *Diem clausit extremum*, and of full Age, and the King maketh Livery unto him of the Manor, and afterwards by another Office found by Commission, &c. it is found that the elder Brother is Son and Heir, &c. then upon the last Office found, the King shall send a *Scire facias* directed to the Sheriff, to warn him to shew why the Manor shall not be resealed into the King's Hand, and he to answer the Profits received in the mean Time. And if the Sheriff do return the Writ served, and that the Party is warned and doth not appear; then the King shall resealed the Lands, and shall make Livery of that Manor unto the elder Brother; and the Writ by which the Service shall be made shall be such:

(a) *Writ*



(a) *Writ of Livery, and to make void a Livery made before.*

**R**EX dilecto sibi, &c. Eschaetori suo in Com', &c. Cum nos nuper, Stamf. 52.  
 comperto per Inquisition' H. de S. Eschaetoris nostri in Com' præd' ad  
 mandatum nostrum captam, & in Cancell' nostram retornatam, quod I. filius  
 H. B. defuncti, & T. uxor' ejus, quæ præf' I. quondam virum suum super-  
 vixit, similiter defunct' tenuerunt diebus quibus obierunt in feodo talliat' sibi  
 & hæc' suis de corporibus suis exeuntibus Manerium de I. cum pertin' in  
 Com' præd' de nobis in capite per servitium milit', & quod T. filius præd'  
 I. & T. tunc fuit propinquior hæc' eorund' I. & T. & plenæ ætatis, cepimus  
 Homagium & Fidelitat' ipsius T. nobis pro Man' præd' debita, & ei Man'  
 illud cum pertin' reddidimus, illudque sibi mandaverimus liberari, sicut per  
 inspectionem Rotulorum Cancellariæ nostræ plene liquet; ac postmodum suppli-  
 cant' nobis H. B. filio & hæred' eorund' I. & T. ut cum per quandam aliam  
 posteriorem Inquisitionem, per præf. Eschaet' de mandat' nostro captam, &  
 in Cancell' nostram retornatam, sit compertum, quod prædict' I. & T. te-  
 nuerunt diebus quibus obierunt in feodo talliato sibi & hæred' suis de corpori-  
 bus suis exeuntibus, præd' Manerium cum pertin' de nobis in capite per servi-  
 tium militare in forma prædict', & prædict' H. filius prædict' I. & T. ætatis  
 quadraginta & sex annorum, est frater senior ejusdem T. & hæres eorundem  
 I. & T. propinquior, absque hoc quod prædict' T. est hæres eorundem  
 I. & T. propinquior, prout per dictam primam Inquisitionem supponit',  
 velimus Man' prædict' cum pertin' in manus nostras resumì, & eidem H. ut  
 fratri seniori prædict' T. & propinquiori hæc' eorundem I. & T. liberari ju-  
 bere; ac nos volentes in hac parte fieri quod est justum præceperimus per  
 Brev' nostr' Vicecom' nostr' Com' præd' quod scire faceret præfat' T. quod esset  
 cor' nobis in Cancellar' nostra in octavis S. Hillarii proxim' præterit', ubi-  
 cunque tunc foret, ad ostendend' si quid pro se haberet aut dicere sciret, quare  
 Man' præd' cum pertinen', una cum exitibus inde per ipsum perceptis, in  
 manum nostram resumì, & idem Man' præf. H. ut fratri seniori ejusdem T.  
 filio propinquiori hæc' eorund' I. & T. liberari, & nobis de exitibus præd' per  
 præf. T. sic percept' respond' non deberet, & ad faciend' ulterius & recipiend'  
 quod Cur' nostra consideraverit in hac parte; ac prædict' Vicecom' nobis retor-  
 naverit, quod scire fecit præfat' T. quod esset coram nobis in Canc' nostra ad  
 diem prædict', ubicunque tunc foret, ad ostend' quod Breve nostr' prædict'  
 requirebat, ad quem diem præd' T. in Canc' prædict' solemniter vocat' non  
 comparuit, per quod considerat' fuit quod Manerium prædict' cum pertin' una  
 cum exitibus inde per prædict' T. percept', in manum nostram resumat', &  
 nobis de exitibus eisd' respondeatur, dictumque Maner' præf. H. liberet'; ce-  
 pinus

(a) And note; For Revocation of a under Age. Rot. Parl. 42 E. 2. M. 2. the Livery made on a false Inquisition, as Case of Wm. de Sefton, finding the Heir of full Age, when he was

*pimus Homagium & Fidelit' ejusd' H. nobis pro Manerio prædict' cum pertin' debita, & ei Maner' illud cum pertin' reddidimus: Tibi præcipimus, quod resumpto in manum nostram Manerio præd' cum pertin' in Balliva tua, una cum exitibus præd' & accepta Securit' a præfat' H. de rationabili Relevio suo nobis solvend' ad Scacc' nostr', eid' H. de Manerio præd' cum pertin' plenam Seisin' sine dilatione haber' facias, juxta consider' præd'; salvo jure cujuslibet, & salvo nobis exitibus de Maner' præd' a tempore mortis præd' T. sic percept'. Teste, &c.*

*Writ of Livery and Partition which shall issue out of the Chancery unto the Escheator upon Partition there made.*

**T**HE Writ which shall be directed to the Escheator to deliver Seisin **B** of Lands unto one Coparcener, or divers, where any of them are within Age, and in Ward, is made in several Manners. One Manner of Writ is, when one Coparcener is of full Age, and the other Coparcener is within Age, and in the Custody of P. to whom the King hath committed the Wardship; then by the Assent of the King's Committee the Partition may be made in the Chancery during the Nonage of the Heir in Ward; and then the Writ directed to the Escheator shall be such:

[261.] *Rex dilecto sibi I. de W. Eschaet' suo in Com' Som' & Dorf. salutem. Sciatis quod ex assensu P. &c. Custod' T. de M. filie A. unius sororum T. de B. defuncti, qui de nobis tenuit in capite, infra ætatem & in custodia nostra existent', consanguin' & unius her', cui una propars, & C. sororis, & alterius her' præd' T. de B. plenæ ætatis existent', cui altera propars tam terrarum & tenementor', quæ Margeria, quæ fuit uxor T. de B. senior' similiter defunct', tenuit in dotem, seu alias ad terminum vitæ suæ hæreditat' præd' T. de M. & C. die quo obiit pertinent; assignavimus præf. C. maneria, terr' & tenementa subscripta, viz. manerium, &c. habend' in partem ipsius C. ipsam de omnibus maneriis, terris & tenementis prædict' secundum Legem & cons. regni nostri contingent', & eidem C. cujus Homagium & Fidelitatem cepimus, & partem suam prædict' reddidimus: Et ideo tibi præcipimus, quod accepta Securit' de præf. C. de rationabili Relevio suo nobis solvend' ad Scaccarium nostrum, eidem C. prædict' maner', &c. cum pertin' suis in Balliva tua liberes, habend' in part' sua prædict'; salvo jure cujuslibet, &c.*

If the King's Tenant hath Issue R. N. his Son, and Alice his Daughter, and dieth, and afterwards R. N. hath Issue a Son F. and two Daughters H. and C. afterwards R. N. dieth seised, F. being within Age, and afterwards F. dieth seised in Ward to the King within Age; and after his Death it is found by Virtue of an Office by Writ, that E. and C. are his **A**



his Sisters and next Heirs, and of full Age; and afterwards by another Office it is found by Commission, &c. that *M.* Son of the said *Alice*, one of the Sisters of the said *R. N.* and *J.* another Sister of the said *R. N.* Father of the said *F.* was Cousin and next Heir to the said *F.* and of full Age; upon which the Sisters of the said *F.* came into the Chancery, and had a *Scire facias* against the said *M.* Son of the said *Alice*, and the said *J.* &c. to shew wherefore they should not have Livery of the Lands as Heirs, &c. And that Writ of *Scire facias* was made returnable the *Monday*, which was the second Week of *Lent*; by which it appeareth, that the Writs which shall be sued in Chancery, may be returned there in the Vacation Time, out of Term; and upon the Return of that *Scire facias*, the said *M.* came and granted that he was not Heir, &c. whereupon the two Daughters *E.* and *C.* had Writ of Livery directed to the Escheator, reciting all the Matter, and reciting in the Writ, that the King had respited their Homage until a certain Day, commanding the Escheator that he make Partition betwixt them, and that he assign to each of them a Part of the Land which is holden of the King *in Capite*; which Writ shall be returned and enrolled in the Chancery; the which Writ is in the Register, fol. 316.

### *Partition and Livery after the Death of Tenant by the Curtesy.*

**I**F it be found by Office by Virtue of a Writ, that *B.* held the Manor of *B.* by the Curtesy of *England*, in the Right of *E.* who was his Wife, which Manor is holden of *P.* by Knight's Service; and it be farther found by the said Office, that *B.* is dead, and *M.* and *A.* are his next Cousins and Heirs, and one of them is within Age, and the other of full Age: Then he who is of full Age, shall have a Writ of Livery to the Escheator, that he take Security for the Payment of his Relief, and that he make Partition betwixt the two Heirs, viz. *M.* and *A.* in the Presence of him who is of full Age, and in the Presence of the *Prochein amies* of him who is within Age, and that he deliver Seisin of his Part to him who is of full Age, and that he retain in the King's Hand the Part of the other Sister. Which Writ shall be returned and enrolled in the Chancery, and that Writ appeareth in the Register, fol. 317.

And the like Writ is in the Register, where the King's Tenant dieth, one of his Daughters within Age, and the other of full Age in the same Folio 317.

(a) *Partition and Livery for Lands in Socage.*

**I**F A Man holdeth Lands of G. in Socage, as of his Manor of B. C which G. and the Manor is in the Ward of the King for the Nonage of G. and also he holdeth other Lands of other Lords by other Services, and dieth, and hath Issue two Daughters, whereof one is within Age, and the other of full Age; they shall have Livery out of the King's Hand, *sc.* the *Prochein amies* of the Heir within Age shall have *Livery cum exitibus*, and the other Daughter shall have *Livery sine exitibus*, and a special Writ shall be directed unto the Escheator in that Case, reciting the whole Matter, and how that the King hath taken Fealty of her who is of full Age, and delivered to her her Part, commanding the Escheator by the Writ, that he take Security of her of full Age for her Relief, and that he make Partition betwixt the Daughters of the Socage Land; and that he deliver the Part of the younger unto her *Prochein amies*, with the Issues and Profits of that Part from the Death of the Ancestor; and that he intermeddle not with the Lands holden of the other Lords; which see in the Register, *fol.* 318.

[262.]  
Stamf. pr.  
53.

If the King's Tenant hath Issue three Daughters, and he giveth Part A of his Lands unto one of his Daughters in Frank-marriage, and one of the other two Daughters hath Issue within Age and dieth, and afterwards the Tenant in Frank-marriage dieth, his Heir of full Age, and then the King's Tenant dieth, and then by Office *virtute Brevis* it is found, that the Daughter of the King's Tenant, and the Issue of the two Daughters are Heirs to the King's Tenant, and that the Issue of one of the Daughters is within Age; and afterwards by another Office it is found, that the King's Tenant gave Part of his Lands to one of his Daughters in Frank-marriage, for which upon that Office found, the other Daughter, and the Issue of the second Daughter, who is within Age, have a *Scire facias* against the Issue of the Daughter who was advanced in Frank-marriage, to shew at a certain Day in the Chancery wherefore the Lands, of which the King's Tenant died seised, &c. should not be delivered to them as Heirs only unto the King's Tenant; and if the Issue of her who was advanced in Frank-marriage, being warned by the *Scire facias*, and so returned warned by the Sheriff, maketh Default, or cannot shew Matter sufficient to maintain her Title; then thereupon a Writ of Livery shall be awarded to the Escheator, rehearsing how that the King hath taken Homage and Fealty of the eldest Daughter, and that he hath rendred to her her Part, commanding the Escheator,

(a) See a Partition repealed by Award of the King's Council on Examination of the Escheator, without making the Parcelers Parties. 27 E. 3. 83.

See 42 Aff. 22. The Case of the Earl of Pembroke.



Escheator, that he take Security of the eldest Sister to pay her Relief unto the Exchequer, and that he make Partition in two equal Parts in the Presence of the Parties, if they will come, and that he deliver Seisin to the Sister of full Age of her Part, and that he retain the other Part in the King's Hands for the Nonage of the Daughter of the other Sister. See the Writ thereof in the Register, fol. 320.

**B** If *A.* holdeth a Parcel of Lands in Socage of *B.* which *B.* is in Ward to the King, and also the said *A.* holdeth another Parcel of Lands of *C.* in Socage, who is also in Ward to the King for Nonage, and also the said *B.* holdeth other Lands of several other Lords by other Services, and afterwards the said *A.* hath Issue seven Daughters, and afterwards one of the Daughters hath Issue within Age and dieth, and then *A.* dieth, and all that Matter be found by Office, then upon that Office returned, they shall have a Writ to the Escheator, commanding him that he take Fealty of the six Daughters for their Parts, and for their Reliefs to be paid in the Exchequer, and that he make Partition of all the Lands into seven Parts in the Presence of the Parties, if they will be there, and that he deliver full Seisin to the six Sisters of their Parts, and that he keep in the King's Hands the Part of her who is within Age, until the King otherwise command him; and that he deliver the Lands and Tenements which are holden of the other Lords, which are assigned for the Part of her within Age, unto the *Prochein amie* of the Infant to whom the Inheritance cannot descend, and that he deliver the Issue and Profits of the Lands holden of other Lords, than of those Lords who are in the Custody of the King, to those who of Right ought to have them. And after that this Writ is awarded to the Escheator, if the Escheator be removed after that he hath made the Partition according to the Writ, and before the Return of the Writ, then the Sisters may sue forth a new Writ to the new Escheator, reciting the whole Matter, and how the Escheator was removed before he had executed the Command unto him, commanding the new Escheator, that if the Partition be not made, that he do all such Things as the other Escheator ought to have done, and retain in the King's Hands, &c.

**C** And then if the new Escheator upon that new Writ, return unto the King in Chancery, that by Virtue of the said Writ he hath made Partition of seven Parts of those Lands, and that he hath retained in the King's Hands, the Part of her who is within Age, and that he hath delivered unto three of the Sisters their Parts, and that the other three Sisters did not come to take their Parts, so that they remain in the King's Hands; upon such Return the said three Sisters may come into the Chancery, and pray to have a Writ unto the Escheator, with the Transcript of the Partition to be inclosed therein, commanding him to take Security of them for their Reliefs, &c. and that he deliver to them their Parts appertaining unto them, according to the Partition made, retaining in the King's Hands the Part of her who is within Age, until he command to the contrary, and that he return the Writ, and what

he hath done upon the same, under his Seal, fully and openly without Delay. See the Writ thereof in the Register, 319.

[263.] And it appeareth by the Register, that if the King's Tenant hath Issue two Daughters, and one be within Age, and the other of full Age, and dieth, that she who is of full Age may sue unto the King to have the Custody of her Sister's Part during her Nonage, and to sue Livery of the other Moiety: And thereupon she shall have a special Writ unto the Escheator, rehearsing how the King hath taken her Homage, and hath assigned unto her the Moiety of the Lands, &c. which appertained unto her for her Part, and that he hath committed the Custody of the other Part unto her, during the Nonage of the Heir the other Coparcener, commanding the Escheator by the Writ, that he take Security of her to pay her Relief into the Exchequer, and that he deliver Seisin of the Moiety unto the Heir of full Age, until the full Age of the other Coparcener within Age, with the Issues and Profits of the other Moiety from the Death of the Ancestor. And thereby it appeareth, that when the other Coparcener within Age cometh of full Age, they both shall sue forth a new Livery jointly. See the Register, fol. 320.

And it appeareth by the Register, that if a Man hath Lands in A London in Fee, and hath Issue two Daughters, and leaseth the Lands for Life, and dieth, and afterwards the Tenant for Life dieth, the Daughters of full Age, and all the same be found by Office; the two Daughters shall sue forth a Writ of Livery for those Lands, because they are holden of the King in Burgage, and the Writ shall be directed to the Escheator, commanding him to make Partition of those Lands betwixt the Daughters. And if one Daughter be indebted to the King, then by the same Writ he shall command the Escheator, that he retain the Part of her who is indebted in the King's Hands, until he hath other Command, and that he deliver the other Part unto the other Daughter: Reciting the same Writ, that he hath taken Homage and Fealty of the other Daughter: And moreover, by the same Writ the Escheator shall be demanded, that he take Security of the other Daughter for the Relief of that Coparcener, if any be due, &c. and that he return the whole Matter into the Chancery under his Seal, &c.

And if the King's Tenant who holdeth of him *in Capite* in Fee dieth, B and hath Issue three Daughters, his Heirs of full Age, and another Woman who holdeth in Dower other Lands for Term of her Life of the Assignment of her Husband, which Lands are also holden of the King *in Capite*, dieth, and the Reversion of those Lands are the Inheritance of the said Daughters; they shall have one Writ of Livery unto the Escheator for all those Lands, reciting the whole Matter, and how that he hath taken their Homage and Fealty, or that he hath respited the same till a certain Day, &c. and that he render to them their Parts, commanding the Escheator, that he take Security of them for to pay their Reliefs, &c. and that he make equal Partition between them in their Presence, if they will appear, and that he give full Seisin to each of



of them of their Parts ; with such a Provision, that each of them shall have Part of that Rent which is so holden of the King *in Capite* for her Part, so that each of them be Tenant to the King, &c. And it appeareth by that Writ, that a Rent may be holden of the King by Knight's Service *in Capite*, as well as Lands. See the Register, fol. 318.

Writ de Dote assignanda.

C THE Writ de Dote assignanda lieth where it is found by Office, that Ant. 274.  
the King's Tenant was seised of Tenements in Fee or in Fee-tail the Day he died, &c. and held of the King *in Capite* ; then the Wife may and ought to come into the Chancery, and there make Oath that she will not marry without the King's Licence: And thereupon the King may assign her Dower in the Chancery of those Manors and Lands, (a) and thereupon she shall have a Writ unto the Escheator where the Lands are, which shall be such :

*Rex Escheatori suo in Com' B. salutem. Sciatis quod de terris & tenementis quæ fuer' N. defuncti, qui de nobis tenuit in capite, & quæ occasione mortis ejusdem N. capt' sunt in manum nostram, assignavimus I. quæ fuit uxor præd' N. tertiam partem Maner' de T. & C. in Com' T. cum pertinent', necnon iii. partem purpart' quæ fuit ipsius N. Cur' libertatis Honoris Winton' & vis. franci pleg. in dicto Com' T. habend' in Dotem suam de Maneriis & purparte prædict' secundum Legem & cons. regni nostri Angliæ contingent' ; necnon de assensu Edwardi Principis Walliæ, filii nostri charissimi, custod' Manor' de R. in Com' Buck', qu' ad l. li. & Maner' de N. cum pertinent' in dicto Com' B. quæ ad x. li. extendunt per annum, sicut per Extentas inde de mandato nostro fact', & in Canc' nostram return', est comperi', assignavimus præf. I. dict' Maner' de N. cum pertinent' pro dote sua dictorum Maner' de R. & N. habend' in forma præd'. Et ideo tibi præcipimus, quod eidem I. dictum Maner' de N. cum pertinent' liberes abend' in dotem suam, sicut præd' est. Teste, &c.*

D And when the Wife hath made her Oath in the Chancery, she may have a Writ of Dote assignanda to the Escheator, to assign her Dower ; and the Writ shall recite, that she hath made her Oath in the Chancery, &c. But the Use is to make the Assignment of the Dower in the Chancery, and to award a Writ unto the Escheator, to deliver the Lands assigned unto her ; and although the (b) King doth commit the Custody of the Land unto another, yet the King may assign Dower unto the Wife in Chancery, and she shall have a Writ unto the Escheator

(a) See Rot. Finium. 1 E. 1. M. 21. a Command to the Escheator to seise all the Lands whereof A. was seised, ac etiam quod Margeria que fuit uxor præd' A. (20 Merc' de Terra) de Terris & Tenementis prædictis assignari faciat donec Rationabilem Dotem ipsam con-

tingent' secundum Legem & consuetudinem sibi fecerit assignari. Et Rot. Claus. 2 E. 1. M. 15. accordant.

(b) See Kelway 133. it seems the Committee cannot assign Dower ; Quare tanen, if it be not good till the Heir sues his Livery.

tor to deliver unto her that Dower, as appeareth by the Register. And the Writ shall be such :

[264.] *Rex Eschaetori, &c. salutem. Cum inter cæter' terras & tenement' I. quæ fuit uxor N. defuncti, qui de nobis tenuit in capite, per nos de terris & tenement' quæ fuer' præd' N. in dotem assignat', assignaverimus eidem I. partem Maner' de Grouby cum pertinent' in Com' præd', necnon tertiam partem purpartis quæ fuit ipsius N. Cur' libertatis Honoris W. & visum franci plegii in eodem Com', habend' in dotem in forma prædict' : Tibi præcipimus, quod eidem I. cujus sacrament' quod se non maritabit sine licentia nostra recepimus, dictas tertias partes in Balliva tua, in præsentia custod' eorundem Maner', & tertie partis, per vos inde præmuniend', si interesse voluerit, vel attornati sui in hac parte, assignar' & liberari fac', habend' in dotem sicut prædict' est ; & cum Assignmentem illam, &c. Teste, &c.* And if the Wife after the Death of the Husband doth come into the Chancery, and prayeth her Dower there ; the King may grant a Writ unto the Escheator, commanding him to take Security of the Wife, that she do not marry her self, and that the Escheator do assign Dower unto her. And the Writ shall be such :

*Rex Eschaetori, &c. Præcipimus tibi quod, capto sacramento M. quæ fuit uxor W. defuncti, qui de nobis tenuit in capite, quod se non maritabit sine licentia nostra, eidem rationabil' dotem suam, ipsam de omnibus terris & tenem' quæ præd' W. quondam vir suus tenuit in dominico suo ut de feodo in Balliva tua die quo obiit, & quæ per mortem præd' W. capta fuer' in manum nostram, & in manu nostra sic existunt, secundum Legem & cons. regni nostri Angliæ contingent', per Extent' inde fact' vel aliam si necesse fuer' iterato faciend' in præsentia B. per te inde præmuniend', si interesse voluerit, assign' fac', & cum Assignment' ill' sic feceris, eam sub sigillo tuo distincte & aperte mittas, ut eam in rotulis Canc' nostre, prout moris est, irrotul' faciamus. Teste, &c.*

And if a Man dieth seised of Lands which are holden by Knight's A Service, of any Manor, or otherwise, as in any Abbey, Bishoprick or Priory, or such as are in the King's Hands by Reason of the Vacancy of the Abbey or Bishoprick, &c. then if the Wife will have Dower, she ought to sue in the Chancery, to have such Writ directed unto the Escheator, to assign her Dower ; but there the Wife shall not make Oath, that she shall not marry without the King's Licence, as appeareth by the Writ ; which is such :

*Rex, &c. Præcipimus tibi quod A. quæ fuit uxor B. defuncti qui de Abbate de Burgo S. Petri nuper vacantis, & in manu nostra existent', tenuit per servitium militare rationabil' dotem suam de omnibus terris & tenement', &c. quæ præd' B. vir suus tenuit de Abbacia præd' in Balliva tua die quo obiit, & quæ post mortem ipsius B. in manu nostra existunt, &c. (ut supra.)*

And the like Writ may be sued by the Wife for Lands, which her B Husband held by Knight's Service of the Manor of him, who is in the Ward to the King ; by Reason of his Nonage ; but there she shall not make Oath, that she will not marry her self, no more than in the Case before.

And



And the King may assign Lands in Dower in the Chancery, rendring Rent yearly to the King, &c. because the Lands do exceed the very Value of the third Part of all the Tenements whereof she ought to have Dower. And then upon that Assignment made in Chancery she shall have and sue such Writ to the Escheator.

*Rex Eschaet', &c. Sciatis quod de terris & tenementis quæ fuerunt E. de B. defuncti, qui de nobis tenuit in capite, & quæ occasione mortis ejusdem E. capta sunt in manum nostram, assignavimus M. quæ fuit uxor prædicti E. Maneria subscripta, videlicet, Maneria de B. & C. &c. cum pertinent' in Comitatu tuo, quæ ad centum libras extenduntur per Annum, habend' in Dotem, ipsam de terris & tenement' præd' secundum Legem & cons. regni nostri Angl' contingent', reddend' inde nobis per annum ad Scaccar' nostrum tantum quod excedit dotem supradict'. Et ideo tibi præcipimus, quod eidem M. dicta Maneria cum pertinen' liberes, ei habend' in dotem suam in forma prædict'. Teste, &c.*

C And if the Wife be impotent, so as she cannot come into the Chancery to make Oath, and to demand her Dower, then she may sue a special Writ directed to certain Persons to take her Oath, and to receive Attorney for the Wife to sue for her Dower in the Chancery, &c. and the Writ appeareth in the Register, fol. 298.

D And if the King make Livery unto the Heir at his full Age, saving unto the Wife her Dower to be assigned by the King; then if the Wife will demand Dower, she ought for to sue for the same in the Chancery; and if she do demand her Dower there, then shall issue a special Writ unto the Escheator, that he warn the Heir for to be in Chancery at a certain Day, &c. and there the Wife shall have the same Day to receive her Dower, &c. And the Writ which shall issue against the Heir shall be such:

*Rex Eschaet', &c. Cum Dominus Edwardus nuper Rex Angl' pater noster, xx. die Januar' proxime præterito ceperit Homagium T. de B. filii & hered' T. de B. defuncti, de omnibus terris & tenementis quæ idem T. pater suus tenuit de dicto patre nostro die quo obiit, &c. & terras & tenementa illa reddiderit eaque sibi mandaver' liberari, salvo jure cujuslibet, & salva M. quæ fuit uxor prædicti T. rationabili Dote sua, ipsam de terr' & tenement' prædict' secundum Legem & cons. regni nostri Angliæ contingent', & ei prout moris est assignand', sicut per inspectionem Rotul' Cancell' dicti patris nostri nobis constat; ac præfat' M. nobis supplicaverit, ut ei Dotem suam, ipsam de terr' & tenement' prædict' contingent' secundum Legem & cons. regni nostri Angl', assignari faciamus, per quam diem dedimus præfat' M. quod sit in Canc' nostra in crastin' Animarum, &c. ubicunque, &c. ad recipiend' Dotem suam prædict': Tibi præcipimus, quod scire fac' præf. T. quod ad diem prædict' intersit Assignat' Dotis prædict', si sibi viderit expedire; & habeas ibi nomina, &c. & hoc Breve. Teste, &c.*

But if the King maketh Livery unto the Heir by his Writ directed to the Escheator, by which Writ he commandeth his Escheator to deliver unto him Seisin of all his Lands, &c. salvo jure cujuslibet; and he putteth not in the Writ these Words, salva M. quæ fuit uxor', &c. rationabili

[265.] *tionabili dote sua, ipsam de terr' & tenemen', &c. contingent', & per nos assignand'* : Then in that Case the Wife ought to sue her Writ of Dowry against the Heir, if she will demand Dower of those Lands, because the King made Livery generally of Lands by his Writ, without any Reservation of Dower to be assigned by him, &c.

And if the King make a Reservation of Dower to be assigned by him **A** by his Writ of Livery which is directed to the Escheator, if the Wife never demand Dower, or if she hath Dower assigned unto her by the King in Chancery ; yet after the Assignment made by the King, the Reversion thereof is in the Heir, and he shall not sue Livery of that Reversion after the Death of the Tenant in Dower, because the Writ of Livery doth not reserve any Thing to the King, but Assignment of Dower to the Wife ; but the Writ doth command the Escheator to deliver Seisin of all the Land, and that the Escheator doth, and by that the Livery of all the Land passeth from the King ; and therefore it followeth, that when the Wife is assigned her Dower by the King in Chancery, that yet the Reversion doth remain in the Heir, &c. for which he shall not sue a new Livery of that Reversion after the Death of the Tenant in Dower, &c. *Tamen quare* of that Case.

If the Land assigned to the Wife be evicted, she shall have a *Scire facias* to reseise the Land, and shall be new endowed, 43 Aff. 32. Br. Dower 65.

(a) And if the Wife be assigned Dower in the Chancery, and after-**B** ward it is surmised by the Heir, or by another for the King, that the Land assigned to the Wife is not extended to the very Value, but that the Land assigned to her is much more in Value than it is extended at, and that the Lands which remain in the King's Hands are extended to the very Value, &c. then the King shall send a Writ to the Escheator to make a new Extent : And upon that Writ returned, if it be found that the Land assigned to the Wife is of greater Value, &c. then upon Return thereof a *Scire facias* shall be awarded against the Wife, to shew Cause wherefore she shall not be anew endowed, &c. and if she be warned, and maketh Default, it seemeth she shall be new endowed for her Default ; or if she appear, and cannot say any Thing contrary to that new Extent, she shall be endowed anew, so as Part of the Land assigned to her, shall be taken from her at the King's Pleasure ; or the King (b) may make a new Assignment of all that she had in Dower, if he pleaseth, and a new Writ shall be to the Sheriff to deliver her Seisin thereof, so newly assigned to her : *Quare* the Use of this Point.

Ant. 274.

And if the Wife make Oath, that she will not marry her self without the King's Licence, and is endowed upon the same, &c. and after-**C** wards she marrieth without Licence, &c. then the King shall send a Writ to the Escheator, that he reseise all the Lands which she holdeth in Dower, as appeareth by the Register, and not all the other Lands which

(a) So if the Wife's Dower be evicted by a Title paramount on the Record carried into Chancery, whereby she was evicted, she may have a *Scire facias* to reseise the Land, and to be newly endowed of the Residue, tho' it be after Livery made to the Heir. 43 Aff. 32.

(b) See also, that if Dower be assigned to the Wife within Age in Chancery, and afterward Livery is made to the Heir, she may have a Writ of Dower of the Residue. 18 E. 3. 29.



which she or her Husband had in their own Right; and the Writ is such :

*Rex Eschaetori, &c. Cum A. quæ fuit uxor I. de B. defuncti, qui de nobis tenuit in capite, quæ nuper sacramentum præstitit corporale, quod se non maritaret sine licentia nostra, jam se W. de P. maritaverit, licentia nostra super hoc non obtenta ut accepimus; Nos, contemptum hujusm<sup>o</sup> nolentes transire impunitum, necnon indemnitati nostræ nolentes prospicere in hac parte, tibi præcipimus, quod si ita est, tunc omnia terras & tenementa quæ prædict<sup>o</sup> W. & A. tenent in dotem ipsius A. de hæredit<sup>e</sup> prædict<sup>o</sup> I. in Balliva tua sine dilatione cap<sup>o</sup> in manum nostram, ita quod de exitibus inde provenientibus nobis respondeas ad Scaccar<sup>o</sup> nostrum, quousque nobis de forisfactura ad nos inde pertin<sup>e</sup> satisfact<sup>o</sup> fuer<sup>e</sup>, vel aliud inde duxerim<sup>us</sup> demand<sup>o</sup>. Teste, &c.*

Writ de Levari facias.

**D** **T**HE Writ of *Levari facias* is a Writ which shall issue out of the Record, and shall issue sometimes out of the Chancery, and sometimes out of other Courts where the Record is. As if a Man be bounden in a Recognizance in the Chancery in 20*l.* to be paid at the Feast of St. Michael next following, then if he do not pay the Money at the Day, a *Levari facias* shall be directed to the Sheriff, that he levy the Sum on his Goods and Chattels: And the Form of the Writ is such :

**E** *Rex Vicecom<sup>o</sup>, &c. Quia I. filius B. solvisse debuit M. de B. xx*l.* in Festo S. Michaelis, anno regni nostri, &c. sicut (a) constat nobis per inspection<sup>em</sup> Rotulor<sup>um</sup> Cancell<sup>is</sup> nostræ & eas ei nondum solvit, ut dic<sup>o</sup>; Tibi præcipimus, quod præd<sup>o</sup> pecuniam de terris & catallis ipsius I. in Balliva tua sine dilatione levare facias, ita quod eam habeas in Cancell<sup>is</sup> nostra in Craft<sup>u</sup> Nativ<sup>o</sup> S. Johan<sup>is</sup> Bapt<sup>iste</sup> prox<sup>imo</sup> futur<sup>o</sup> ubicunque tunc fuer<sup>e</sup>, præf. M. ibid<sup>o</sup> liber<sup>o</sup> & hoc nullatenus omittas; & habeas ibi hoc Breve, &c.*

**F** And he may have an *Alias* and a *Pluries*, *Vel causam nobis significes*, directed to the Sheriff; and if he will not return the Writ, he shall have an Attachment against the Sheriff. And this Writ is given by the Common Law before the Statute of (a) *West. 2.* which gave the

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Writ

(a) If the Record be sent *coram Rege*, and there is a Writ of *Scire facias* to execute it, the Writ shall be *Si ut constat nobis per Record<sup>um</sup> Quod in Cancellaria nostra Venire fecimus.* 17 E. 3. Brief 824.

(b) See accordant per *Trew.* 8 E. 3. 44. but adjudged *contr. viz.* That if the Year be passed after the Date of the Recognizance, tho' it be within the Year of the Day for Payment, he is put to a *Scire facias*. For per *Ston.* the Words of the St.

*West. 2. Si recens sit Recognitio*, do relate to the Day of making the Recognizance, and not to the Day of Payment, yet See 8 Co. — *contr. Ideo Quære.* 21 E. 3. 22. but clearly if the Day of Payment be limited by Defeasance to be 10 Years after, there after the 10 Years, he must sue a *Scire facias*. (Note; The Defeasance is out of the Record.) *Vide infra* 266. C. And Note. 16 E. 3. *Scire facias* 41.

Writ of *Elegit*. But this Writ ought to be sued within the Year after the Day of Payment to be made by the Recognisance ; for after the Year and Day of Payment to be made, if he do not sue forth this Writ, then he ought to have a Writ of Debt before the Statute of *West. 2.* which gave the *Scire facias* against him who was so bounden by Recognisance ; but now by that Statute he shall have the Writ of *Scire facias*, to make him come at a certain Day into the Chancery, to shew what he can say why he ought not to pay the Sum, &c. And if the Sheriff upon the *Levari facias* return that he hath levied 10*l.* of the Sum, &c. which he hath delivered to the Party, &c. then upon that Return, he who ought for to have the Money, may sue forth a *Sicut alias levari facias* directed to the Sheriff, for to levy the Residue of the Sum : Which Writ shall be such :

[ 266. ]

*Rex Vic', &c. Quia T. Abbas de B. solvisse debuit R. centum libras, &c. in Festo, &c. anno, &c. sicut constat, &c. & eas, &c. per quod tibi praeceperimus, quod praed' pecuniam de terris & catallis ipsius Abbatis in Balliva tua sine dilatione levare fac', ita quod eam haberes in Canc', &c. ubicunque, &c. praef. R. ibid' liberand' ; ac tu nobis retornasti, quod cepisti in manum nostram per diversas vices de bonis & catallis ipsius Abbatis ad valenc', &c. qu' inde levasti, & praef. R. habere fecisti ; Tibi praecipimus, quod resid' debiti praed' de terris & catallis ipsius Abbatis in Balliva tua sine dilatione levare facias, ita quod illud habeas coram nobis a die, &c. ubicunque, &c. praef. R. ibid' liberand' ; & hoc nullatenus omittas, &c. Teste, &c.*

12 H. 4. 17.

13 H. 4. 17.

And if a Parson be bounden in a Recognisance in Chancery in 200*l.* A to pay at a certain Day, &c. and he doth not pay the same at the Day, then the Recognisee shall have a *Levari facias* directed to the Bishop, or a *Levari facias* directed to divers Bishops, to levy the Money of his Spiritual Goods ; and the Writ shall be such :

*Rex venerabili in Christo Patri, &c. salut'. Quia I. Persona Ecclesiae de S. Com' H. vestrae Dioc', & T. de L. Persona Ecclesiae de M. Com' de B. Dioc' Linc', solvisse debuer' magistro F. ducent' libras in Festo omnium Sanctorum, &c. anno, &c. sicut constat, &c. ut dicit ; Vobis mandamus, quod centum & viginti marcas de sum' praed' de bonis & catallis ipsius I. in dicta Dioc' vestra sine dilatione levare fac', ita quod easdem centum & viginti marcas habeamus in Canc' nostra ubicunque, &c. praef. F. ibid' liberand' ; & hoc nullatenus omittat' ; & habeatis ibi hoc breve. Mandavimus etiam W. Linc' Episcopo, quod ipse centum & viginti marcas, &c. residuas de bonis Ecclesiasticis ipsius T. in dicta Dioc' levare faceret in forma praed'. Teste, &c.*

But if the Parson hath Lands of his own Purchase, he may have a Writ to the Sheriff to levy the same, &c. But now by the Statute of *West. 2. cap. 18.* he may sue forth an *Elegit* upon the Recognisance made in the Chancery, directed to the Sheriff, to have Execution of the Moiety of his Lands, and of all his Goods and Chattels, except his Beasts of the Plough, and to deliver them to the Heir for his Maintenance ; and the Form of the Writ is such :



*Rex Vicecom', &c. Quia R. undecimo die Feb' ult' præterito, in Cancell' nostra recognovit se debere N. viginti libras, quas ei solvisse debuit in Festo, &c. tunc prox' sequenti, sicut constat, &c. Cancell' nostræ, & eas ei nondum solvit, ut dict' ; ac idem N. juxta Stat' inde editum, eligit sibi liberari pro præd' viginti libris omnia catalla & medietatem terræ ipsius R. tenend' juxta formam præd' viginti librarum, per rationabilem appretiation' eorundem, exceptis bobus & afris carucæ, in præsentia prædict' R. per te inde præmutuend', si interesse voluerit, faciend', præf. N. vel suo certo Attornato fac' liberar' : & si catalla illa ad valenc' præd' viginti librarum non sufficient, tunc catalla illa sic minus valenc' per rationabilem appreciation', ac etiam medietatem terræ ipsius R. in Balliva tua per Extent' similiter in præsentia tua in forma præd' faciend', præf. N. vel dicto suo Attornato fac' liberar', tenend' ut liberum tenementum suum, quousque dictum debitum inde fuerit levatum. Et de eo quod inde fec' nobis in dicta Cancell' nostra tali die, ubicunque tunc fuerit, sub sigillo tuo distincte & aperte constare facias ; & habeas ibi hoc Breve. Teste, &c.*

C (a) And after the Year and the Day of Payment passed of the Recognition, the Recognisee ought for to sue a *Scire facias* against the Recognisor, to shew what he can say why the Recognisee should not have Execution ; and if he be returned upon that Writ warned by the Sheriff, if he do not appear, or if he do appear, and cannot say any Thing wherefore he should not have Execution, then the Recognisee may sue forth the Writ of *Elegit* to have Execution of all his Goods, and of the Moiety of his Lands : And if the Sheriff return the *Elegit*, that the Recognisor hath made a Feoffment in Fee of Part of the Lands

Vide 265. G.

did. Reg. Judic.

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to

(a) Note ; If the Party to a Judgment or Recognition be returned Dead, a *Scire facias* shall issue first against the Executors, and if he has no Executors, or if they have not Assets, then a *Scire facias* shall go against the Heir. 7 H. 4. 30. 19 R. 2. Execution 163. and by antient Usage until the Heir was returned Dead, or Nihil, no *Scire facias* went against the Tertenants. 18 E. 2. Execution 142. But he may have a *Scire facias* against the Executors Heirs and Tertenants in the same Writ, if he will. 2 Co. 12. Sir William Herbert's Case. And as to the Heir, (1.) He must be said to have Lands in Fee-simple by Discant, otherwise the *Scire facias* will be but as against a Tertenant. 27 H. 6. Execution 135. (2.) It ought to be *Tenentibus Terrar' quæ fuer' the Conusees the Day of the Recogn'*, or afterwards. 46 E. 3. Brief 605. (3.) In a *Scire facias* upon a Recognition in C. B. he ought to name all the Tertenants at his Peril. (*Quere.*) But 'tis otherwise, *alibi*. 46 E. 3. Brief 605. 20 E. *Scire facias* 121. 17 E. 2. Execution 139, &c. But now it seems he may have a *Scire facias* against the Tertenants generally without naming them, and without warning the Heir or

Executor, except the Heir has Lands. *Rast. Entr.* 446. *Dyer* 208. *Register* 57. 7 R. 2. Execution 46, 406.

*Scire facias C. Tenenti Terrarum quæ fuer' prædict' A. the Conusor, &c. quare prædict' summa de — de Terris & Catallis suis Levavi, &c.* And the Writ adjudged good, tho' the Words & catallis had not been therein. 30 E. 3. 23. It seems he shall not have a *Scire facias* against the Tertenants, till a *Scire facias* sued against the Executors, and nihil returned. 7 H. 4. 31. 19 R. 2. Execution 163. And Note ; A *Scire facias* and a *Tessatum* in another County, amount to a *Scire facias*. 18 H. 6. 17. Execution 3. And if any other be Tertenant, who is not returned warned, the *Scire facias* shall be against him, and so he may delay Execution. 41 E. 3. Execution 37. And if the one comes and pleads, but the other makes Default, Judgment shall not be given on the Default, till the Plea be determined. 6 E. 3. 15. Execution 103. And if on the Issue it be found against the Tenant, yet no Land shall be put in Execution, but only the Land of the Conusee in his Hands. 33 E. 3. Execution 162. See *Rast.* 64.

to divers Tenants, &c. and that he hath enfeoffed the King of the Residue ; then upon that Return the Lands whereof the King is seised by that Feoffment are discharged. But he may sue a *Scire facias* to warn the other Tenants to appear at a certain Day, to shew Cause wherefore the said Lands shall not be delivered in Execution ; and if they be warned, and do not appear, or if they come, and cannot say any Thing, &c. to bar the Execution, then the Recognisee shall have Execution against them of those Lands by Writ of *Elegit*, &c. but he shall have the *Elegit* before that he sueth the *Scire facias* against those Tenants.

And if a Man be bounden by Recognisance in the Chancery, and D the Recognisor hath certain Indentures of Defeasance ; then, if the Recognisee will sue Execution upon the Recognisance, the Recognisor may come into the Chancery, and shew the Indentures of the Defeasance, and that he is ready to perform them, and thereupon he shall have a *Scire facias* against the Recognisee returnable at a certain Day in the Chancery ; and in the same Writ he shall have a *Superfedeas* directed to the Sheriff, that in the mean Time he do not Execution by Virtue of the Writ sued forth by the Recognisee. And if the Sheriff upon any such Writ return, that he hath sent to the Bailiff of the Liberty to do Execution, which Bailiff hath returned him no Answer ; then upon that Return he shall (a) have a new Writ directed to the Sheriff, with a *Non omittas* therein, that he enter the Franchise and do Execution, &c.

[267.]

And a Man may sue Execution by *Scire facias* upon a Recognisance A made in the Time of another King in the Chancery, or in the Common Pleas, or in any Court of Record. And the King may by his Commission give Authority to one to receive a Recognisance of another Man, and to return the same into the Chancery ; and by Virtue of that Commission, if a Man doth before the Commissioners acknowledge a Debt to be paid to another at a certain Day, &c. and certify the same into the Chancery with the Commission, &c. then upon the Certificate thereof, if he do not pay the Debt at the Day, he shall have an *Elegit* upon the Conusance so taken, as well as if it were taken in the Chancery ; and the Form of the Commission is such :

*Rex dilecto & fideli suo R. de M. salut'. Sciatis quod dedimus vobis potestatem recipiend' Recognit' quam I. de H. coram vobis facere voluerit G. de T. de quacunque pecunia summa ; & ideo vobis mandamus, quod cum Recogn' illam receperitis, nos inde, ac de die sive diebus solutionis, necnon de die caption' ejusdem, in Canc' nostra, sub sigillo vestro, distinde & aperte reddat' certior', hoc Brev. nobis remittentes. Teste, &c.*

And there is another Form thus : *Rex, &c. Sciatis quod dedimus vobis potestatem recipiend' hac vice, nomine nostro, Recognition' quam I. de T. de quocunque debito facere voluerit coram vobis ; & ideo vobis mandamus, quod cum Recogn' illam ceperitis, nos ind' sub sigillo vestro distinde, &c.*

And

(a) So it was done where Beasts had been detained, and no Delivery made to the Plaintiff. *Raft. Entr.* 546. See 12 E.

3. *Scire Facias* 117. 2 E. 3. *Execution* 129. 14 E. 3. *Execution* 73.



And by that Commiffion he hath general Authority to take Recognifance of any Man who will acknowledge any Debt before him to any Perfon whatfoever, &c.

- B** If a Man be bounden in Recognifance in 100*l.* to pay at five feveral Days 20*l.* then immediately after the first Day of Payment is paff, he may fue an *Elegit* for 20*l.* and at the fecond Day he may fue another *Elegit*, or *Levari facias* of other 20*l.* and fo of all the 20*l.* every Day of Payment, and he fhall have fuch Writ of *Elegit* for the Payment that fhall be made at that Day, and fhall not ftay his Suit till all the Days of Payment are paff.

So note, that *Capias ad Satisfaciend.* lieth not upon a Recognifance. 34 H. 6. 45. 48 E. 3. 14. 10 E. 3. Execution 137.

- C** (a) And if two be bound in Recognifance in Chancery, viz. *quilibet eorum in folid' recogn' se debere*, &c. he may fue feveral *Scire facias* againft them to have the Money levied of their Goods and Lands, &c.

Vi. 38 E. 3. 12 Br. Execution 42.

- D** If a Man be bound in a Recognifance in Chancery or other Court of Record, and afterwards the Recogniffee dieth, his Executors may fue forth an *Elegit* to have Execution of the Lands of the Recognifor. And if the Sheriff return that the Recognifor is dead, then the Executors fhall fue a fpecial *Scire facias* againft the Heir of the Recognifor, and againft thofe who are Tenants of the Lands which he had at the Day of the Recognifance made; and that Writ of *Scire facias* fhall recite and fhew that the Executors who fue the Writ have elected to have the Moiety of the Lands which the Recogniffee had at the making of the Recognifance; and the Form of the Writ is,

*Rex Vic', &c. Cum I. de W. tali die &c an', &c. in Cancell' noſtra recognovit ſe debere N. nuper Duci Lanc' cent' libras, quas ei ſolviſſe debuit in Feſto, &c. tunc prox' futur', ſicut conſtat, &c. & eas ei nondum ſolvit, ut dicit', ac W. B. & C. Exec' præd' nuper Ducis defuncti, juxta Stat' inde edit', eleger' ſibi liberari pro præd' cent' libris omnia catalla & medietat' terræ ipſius I. de W. tenend' juxta form' Statuti præd'; per quod tibi Præceperimus, quod ſcire faceres præfat' I. de W. quod eſſet in Cancell' noſtra tali die proxim' futur', ubicunque, &c. ad oſtend' ſi quid pro ſe habere vel dicere ſciret, quare omnia catall' ſua & medietas terr' ſuæ præf. Execut' pro prædict' cent' libris liberari non deberent, juxta form' Statuti prædict', ac tu nobis retornaveris, quod prædict' I. de W. mortuus eſt; Tibi præcipimus, quod ſcire fac' Hæred' ipſius I. de W. necnon Tenentibus terr' quæ fuit ejusdem I. de W. die Recogn' præd' quod ſint in Cancell' noſtra, &c. proxim' futur', ubicunque, &c. ad oſtendend' ſi quid pro ſe habeant vel dicere ſciant, quare mediet' terræ quam ipſi tenent de terra prædict' præf. Execut' pro præd' centum libris liberari non debeant, juxta form' Stat' præd'. Et habeas ibi nomina illor' per quos, &c. Teſte, &c.*

And thereby appeareth, that if a Man be bounden in a Recognifance, &c. although that the Recogniffee dieth, yet his Executors cannot fue forth an *Elegit* to have Execution of the Recognifance within the

14 A. 7. 16.  
15 A. 7. 16.

(a) Note; If the one be in by Diſcent, and within Age, Execution ſhall tarry againſt all. 24 E. 3. 56. 29 Aff. 37. and the others in a *Scire facias* againſt them may ſhew

this. 29 E. 3. 39. adjudged, and affirmed in Error, where the Conuſor died, his Heir being within Age, and the others warned by *Scire facias*.

the Year after the Day of Payment, without suing forth a *Scire facias* against the Recognisor, &c. But against the Heir of the Recognisor, or the Tertenants, the Recognisee or his Executors ought to sue forth a *Scire facias*, &c. otherwise if they be ousted, &c. by such Execution of their Lands, they shall have an Assise of Novel Disseisin, &c.

### Writ de Idemptitate nominis.

THE Writ de *Idemptitate nominis* lieth, where a Man is sued in a personal Action, and upon the *Capias* or *Exigent* awarded, another Man who beareth the same Name, is arrested by Force of the Writ, then he who is so arrested shall sue forth this Writ of *Idemptitate nominis*; and this Writ shall be directed sometimes to the Escheator, if he or his Goods be arrested by him, or unto the Sheriff, if he be vexed or molested by him; and the Form of the Writ is such:

[268.] (a) *Rex dilecto sibi I. de S. Eschaetori suo in Com' Linc', salut'. Cum nuper, ut accepimus I. de R. de London' Taverner jam defunctus, ut dic', pro eo*

(a) Note; In the Case of *Wilson* and *Stubbs*, it was resolved, that if in a Writ against *J. S. J. S.* the Elder is taken after Judgment, it shall be intended *J. S.* the Elder: And yet after Judgment, *J. S.* the Younger, if taken, cannot have an *Idemptitate nominis*, but false Imprisonment; but see the Precedents, *contra*, viz. *P. 36 H. 6. Rot. 48. John Skeyt's Case, M. 20 H. 7. Rot. 136. Fuller's Case. See 5 E. 4. 48.* otherwise if it was a *Capias utlagatum*, for there the King is interested. *20 E. 3. Brief 683.*

What shall be said the same Name, or not. If *J. de D.* be outlawed, and *J. D.* taken, he shall not have an *Idemp' nominis*, but *Trespas*; per *Culpeper*; and see there a Writ brought against *J. de D.* and Process continued against *J. D.* and a Protection purchased by *J. D.* the Process shall be amended by the Statute *14 E. 3.* but the Protection was not allowed *licet constabat esse eandem personam*; but otherwise had the Protection been purchased before the Writ. *11 H. 4. 70.*

If a Writ be against *J. G.* and the Sheriff takes *J. C.* he shall not have an *Idemp' nominis*; but if a Writ comes against *J. G.* de *B.* and the Sheriff takes *J. G. de C.* he shall have it. *1 H. 5. 5. b. and by Litt.* he may have *Trespas* if he will. *2 E. 4. 7.*

Note well; If *J. C. Butcher* be outlawed, and *J. C. Husbandman* is taken by *Capias utlagatum*, he shall be discharged by Plea; for it affirms the Outlawry good

against *J. C. Butcher*; but if *Trespas*, or Debt be brought against *J. C. de D. Butcher*, and there comes *J. C. de B. Husbandman*, and appears and pleads, and he is outlawed after Judgment: Now if he be taken he shall not avoid it by saying that *J. C. de B. Butcher*, against whom the Action was brought, and *J. C. de B. Husbandman* who now appears, are divers Persons, and that he is not the same Person against whom the Original was purchased; but he shall say further, that he did never appear upon that Original; for if he has appeared and pleaded, he is as well liable, as if he were the same Person. But by *Paston*, he shall not have such an Issue in Avoidance of a Record, no more than in Avoidance of a Fine levied in another Name; I shall not say I am another Person, or that I never appeared. *19 H. 6. 58.* And it seems without such special Shewing, he shall not come and say that he is not the same Party, or that he did not appear, without shewing that the other of the same Name did. *Quare.* (2.) It seems that the other may say, that he whom he alleges did never appear. See *10 E. 4. 16. 2 H. 6. 19.* where one came in by *Capias pro Fine*, and said that he never did appear, &c. and it was not allowed; but he afterwards shewed, that another of the same Name did appear *absque hoc*, that he himself did ever appear; and it was held good. *22 H. 6. 18.*



eo quod non venit coram Justic' nostris de Banco ad respondend' R. de tempore quo fuit Receptor' denarior' ipsius R. in Exigend' positus fuisset in Hustingo nostro London' ad utlagand', & ea occasione die Lunæ proximo post Festum S. Petri in Cathedra anno regni nostri decimo, utlagatus; ac jam ex parte I. de R. de Lond' Baker intellexerimus, quod licet ipse non sit idem I. de R. qui ad sectam ipsius R. utlagatus fuit, nec aliqua bona seu catalla quæ fuerunt ejusdem utlagati ad manus suas devener', tu tamen, propter Idemptitatem hujusmodi nominis & cognominis I. de R. prætendens ipsum I. de R. de London' Baker esse eundem I. de R. de London' Tavern', qui sic utlagatus fuit, bona & catalla ejusdem I. de R. de Lond' Baker, colore ejusdem Brevis nostri, de bonis & catallis quæ prædict' I. de R. de Lond' Tavern' habuit in Balliva tua die promulgationis Utlagat' prædict' in manum nostram capiend', in manum nostram seiscire intendis, & ipsum ea occasione multipliciter inquietas minus juste in ipsius I. de R. de London' Baker, dampnum non modicum & gravamen; super quo nobis supplicavit sibi per nos de remed' provid': Et quia ipsum I. de R. de Lond' Baker indebite prægravari nolumus, tibi præc', quod si per inquisition' vel alio modo legitime tibi constare poterit, prædict' I. de R. de Lond' Baker, non esse eundem I. de R. de L. Tavern', qui sic utlagat' fuit, nec aliqua bona seu catalla quæ fuerunt ejusdem utlagati die promulgationis Utlagariæ prædict' ad manus suas devenisse, ut est dictum, tunc captioni bonorum & catallorum ejusdem I. de R. de L. Baker, occasione Utlagat' prædict' in manum nostram supers. omnino. Proviso semper, quod de omnibus bonis & catall' quæ præd' I. de R. de L. Tavern' habuit in Balliva tua die promulgat' Utlagat' præd', si quæ fuer', nobis resp', ut est justum. Teste, &c.

A And so if a Man be distrained by Process out of the Exchequer for to account, &c for another Person who hath the same Name which he hath, then he shall sue that Writ to the Barons of the Exchequer and to the Treasurer, and the Writ shall be such:

Rex Thesaurar' & Baronibus suis de Scaccar' salutem. Monstravit nobis J. Clerke de N. quod cum quidam J. Clerke nobis in quoddam Compoto de exitibus passagii Viridis casir' reddend' die quo obiit tenebat', qui quidam J. Clerke mortuus est, & vocabat', dum vixit, J. Clerke de A. ut dicit', ac pro eo quod prædict' J. Clerke de N. habet idem nomen & cognomen sicut præfat' J. Clerke de A. ad reddend' nobis Compot' de exitibus prædict' multipliciter inquietari facitis minus juste, ut accepimus, super quo idem J. Clerke de N. nobis supplicaverit, ut sibi de remedio in hac parte subvenir' velimus: Nos tam pro nobis quam pro præfat' J. Clerke quod justum fuer' fieri volentes in hac parte, vobis mandam', quod si per aliqua memorand' dict' Scaccarii, vel per inquisitionem inde, si necesse fuerit, capiend', inveneritis ipsum J. Cl' de A. Commission' nostram de Officio illo habuisse, & exitus inde prætextu hujusmodi Commission' nostræ aut' alio modo recepisse, & ipsum J. Clerke de N. hujusmodi Commission' nostram non habuisse, nec se inde in aliquo intromisisse, & ipsum J. Clerke de N. propter (a) Idemptitat' nominis & cognominis, & non alia de causa, coram vobis impetit' fuisse; tunc ipsum J. Clerke de N. ad reddend' nobis compotum

(a) Note; The Idemptity here is of both lie of two Names of Baptism, but only of Names; and see Dyer 5. That it does not Surnames.

potum de exitibus prædict' ad (a) idem Scaccar', prout justum fuerit, exonerari & quietum esse fac', Processum debet' vers. præf. J. Cl. de A. si superstes sit vel hæ', executores, seu terrarum & tenementorum ipsius J. Cl. de A. si mortuus fuerit, tenentes, juxta juris exigent' facientes. Tesie, &c.

27 H. 8. 1.  
17 E. 3. 9.

And if a Man be taken by a *Capias utlagatum*, he may sue forth a **B**

13 H. 4. 12.

Writ *de Idemptitate nominis* in the Chancery directed to the Justices of the Common Pleas, if the Process be sued there, or unto the Justices of the King's Bench, if the Process be there, commanding them to make Enquiry, &c. as afore is said, &c. so as this Writ seemeth but as a Commission to make Enquiry, and to know the Truth; and upon that Writ directed to the Justices, they shall award a Writ unto the Sheriff to (b) make the Enquiry, &c. but if a Man be outlawed in the Common Pleas, and taken by *Capias*, he may come into the Common Pleas, and pray a Writ of Enquiry whether he be the same Person, without suing the Writ *de Idemptitate nominis*.

27 H. 8. 1.  
14 E. 3.  
Br. 271.

And if an *Exigent* be to be awarded against one, if one who hath the same Name come and saith that he is ready to answer, then the Plaintiff (c) may say that he is not the same Person, and then the Plaintiff shall put a Diversity of the Names, and the same shall be entred, and then the *Exigent* shall be awarded according to that Difference which the Plaintiff hath made.

14 H. 4. 27.

9 H. 4. 3.

(d) At the *Exigent* returned the Defendant appeareth by *Superfedeas*, and the Plaintiff saith, that he that appeareth is not the same Person: And the Opinion of *Hanke* was, that he shall be put to his *Idemptitate nominis*, and shall not that Way avoid the Outlawry.

And if an *Exigent* be to be awarded upon an Indictment, if one **C** cometh and saith, that he hath the same Name as he against whom the Process upon the Indictment is awarded, and prayeth that the King's Attorney may put a Difference of their Names; the same shall not be done, for that should change the Indictment, because the Process ought to be made according to the Indictment; and if he be grieved by the Process, he must sue forth the Writ *de Idemptitate nominis*, and shall not have other Remedy, &c. And he may have that Writ to the Justices of the Peace if they award Process of Utlagary upon Indictments taken before them, and also to the Justices of Gaol-delivery, as appeareth by (e) the Register, fol. 195, 196.

[269.]

(a) So note; The Tertenants are charged to account, and the Land is charged, although that no Judgment was given *pro Rege, viz. in Defectu Execution* J. C. de D. See *Dyer* 225. Sir *Will. St. Loe's* Case.

(b) Or alledges that, he is named *J. S.* and not *J. R.* as the Writ supposes; and thereupon he shall have a *Scire facias* against the Plaintiff in the Suit, &c. See 1 H. 5. 5.

(c) And if he does not say so in the Writ, it shall abate. 18 E. 2. Brief 834.

(d) But if there be a Diversity of Names in this Case, on such Plea, &c. an *Exigi de Novo* shall issue against the other; per *Huill* 14 H. 4. 27. and so in a *Præcipe, Summons ad Warrantizand*, &c. 19 H. 6. 58.

(e) Note; At the *Pluries Capias* one appeared who had the same Name, and the Plaintiff said he was not the same Person; and for that he had not put the Diversity of the Names in his Writ, it abated. 22 E. 4. 14. 8 E. 3. 19. 18 E. 2. Brief 834.



## *Writ de Homagio respectuando.*

**A** **T**HE Writ of Respite of Homage lieth, when the Heir comes of full Age who holdeth of the King *in Capite*, and ought to sue his Livery, then the Order is, that he first do Homage to the King, and thereupon to have his Writ of Livery to the Escheator; but the King of Grace and Favour may respite his Homage as he pleaseth: And thereupon he shall have a Writ unto the Escheator testifying the same, and commanding him to deliver him Seisin of the Lands; and the Writ shall be such (a):

*Rex dilecto, &c. Eschaet' suo, &c. salutem. Scias quod respectuamus Homagium I. soror' & hær' I. filii T. de B. defuncti, nobis de omnibus terris & tenem' quæ præd' I. frater suus tenuit de nobis in Capite die quo obiit debitum, usque ad Festum S. Michael' prox' futur', & terras & tenem' illa ei reddidim'. Et ideo vobis mandam', quod accepta Secur', &c.*

## (b) *Writ de Hæretico comburendo.*

**B** **N**OTE, It appeareth by *Britton* in his Book, that those Persons shall be burnt who feloniously burn others Corn, or others Houses, and also those who are Sorcerers or Sorceresses; and Sodomites and Hereticks shall be burnt; and it appeareth by that Book, *lib. 1. cap. 17.* that such was the Common Law. (c) But note, That the Person who shall be burnt for Heresy ought to be first convict thereof by the Bishop who is his Diocesan where he dwelleth, and abjured thereof, and afterwards, if he relapse into that Heresy or any other, and thereof be condemned in the said Diocese, then he shall be sent from the Clergy to the secular Power, to do with him as it shall please the King, &c. And then it seemeth the King, if he will, may pardon him the same; and the Form of the Writ is such:

**C** *Rex, &c. Majori & Vic' London' salutem. Cum venerabilis pater Tho' Archiepiscopus Cantuar', totius Angliæ Primas, & Apostolicæ Sedis Legatus*  
H h h h
tus

(a) But if the Lord takes Homage of the Heir within Age, he is thereby out of Ward, *per Bro. Homage 9. Vide Ant. 142. con.* and so the Law seems to have altered in this Point.

(b) Note; Until the Time of H. 4. no Person was put to Death for Opinions in Religion in England: See the Reason hereof in *Taylor's Liberty of Propheying*, p. 1025. sect. 15. *Baker's History* 345. and *Sander-son's History* 10.

See the Cases of *Anne Knell* and *Anne Askew*, burnt 4 Ed. 6. for denying Christ to have taken his Flesh of the Virgin Mary. *Heylin's Hist.* 88, 89. and *Burnet's History*

of the Reformation, *first Part* 27. where the Temporal Courts adjudged what was Heresy. See also good Matter in *Petit Brook* 458. and 13 Co. 59. *Mutton's Case*.

(c) See 12 Co. 56, 57, 93. That by the Common Law no Bishop could convict of Heresy as to Loss of Life, but only as to Penance & *pro salute Animæ*: But in the Case of Life, the Conviction by the Common Law ought to have been before the Archbishop in Convocation.

See *Petit's Collections* 72, 73. the Writs and Process for burning *Barthol. Legate* and *Anne Wightman*. Temp. Jac. 1.

tus, de consensu & assensu ac consilio Episcoporum & Confratrum Suffragan' suorum, necnon totius Cleri Provinciæ suæ (a) in Concilio suo Provinciali congregat', juris ordinibus in hac parte requisit' in omnibus observat', W. Sawtr', aliquando Capellanum, in Hæres. dampnat', & per ipsum Willielmum præantea in forma juris abjurat', & ipsum Will' in Hæresim præd' relaps. per suam sententiam definitivam Hæreticum manifestum pronunc', & declarav', ac degradandum fore decreverit, & ab omni prærogativa & privilegio Clericali ea de causa realit' degradaverit, ipsumque Will' Foro Seculari relinquendum esse decreverit, & realiter reliquit, juxta Leges & Canonicas Sanctiones editas in hac parte, ac Sancta Mat' Ecclesia non habet ulterius quid fac' in præmiss. Nos igitur, zelator Justitiæ & Fidei catholicæ cultor, volentes Ecclesiam Sanctam ac jura & libertates ejusdem manutenere & defendere, & hujusmodi Hæreses & Errores de Regno nostro Angliæ (quant' in nobis est) radicitus extirpar', ac Hæreticos sic convictos animadversione condigna punire; attendentesque hujusmodi Hæreticos in forma prædict' convictos, & damnatos juxta Legem divinam & humanam canonica institutione, & in hac parte consuetudinar' ignis incendio comburi debere; vobis distinctius quo possimus præcipimus, firmiter injungentes, quod præf. Will', in custodia vestra existent', in aliquo loco publico & aperto infra Libertat' Civitatis præd' causa præmissa cor' populo publico igni commit', ac ipsum in eod' igne realit' comburi fac', in hujus criminis detestationem, aliorumque Christianorum exemplum manifestum: Et hoc sub periculo incumbente nullatenus omittatis. Teste, &c.

(b) And by that Writ it appeareth, that a Man ought to be convicted of the Heresy by the Archbishop and all the Clergy of that Province, and abjured for the same, and afterwards anew convicted and condemned by the Clergy of the same Province, and that in their general Council of Convocation. But now by the Statute of Hen. 4. cap. 15. it is enacted, That every Bishop in his Diocese may convict a Man of Heresy, and abjure him, &c. and afterwards convict him anew thereof, and condemn him, and warn the Sheriff or other Officer to apprehend him, and burn him, &c. And that the Sheriff or other Officer ought to do the same by the Precept of the Bishop, and without any Writ from the King to do the same. And that is the Cause (as it seemeth) that that Writ is not put into the new Registers, because that Writ ought not at this Day to be sued forth, but is as it were void by Reason of the said Act.

(c) But now by the Statute made Anno 25 H. 8. cap. 14. that Statute which

(a) See Bro. Heresy 1. That if one will abjure a second Heresy, yet he shall be burnt; and that although the second Heresy be in another Point of Faith. See *Finalit. Juris Canon.* 144, 145.

(b) See the Book of Entries Tit. Enditement, an Enditement before Commissioners for Heresy, a Capias awarded, and the Partry delivered to the Ordinary.

(c) See the Statutes, and note by 25 H. 8. c. 14. the Statute 2 H. 4. is repealed; and

by 1 El. c. 12. the Statute 5 R. 2. c. 5. and 2 H. 5. c. 7. and 25 H. 8. c. 14. are repealed; and by 1, 2 Ph. & Mar. c. 6. the Stat. 5 R. 2. 2 H. 4. and 2 H. 5. are revived; and by Statute 1 El. c. 10. the Statutes 1, 2 P. & M. c. 6. and 5 R. 2. 2 H. 4. 2 H. 5. are all repealed; so that this now stands as at Common Law before those Statutes.

And note; By the Stat. 29 Car. 2. c. 9. this Writ *De Hæretico comburendo* is abolished. *Laus Deo.*



which was made *Anno 2 H. 4.* is repealed and made void. And now it is enacted by this late Statute, that he who is abjured for Heresy, and afterwards falleth into Relapse, and is convicted thereof before the Ordinary, that yet the Ordinary ought not for to commit him to the Lay Power to be burnt, without the King's Writ first obtained for to burn him, as appeareth by the said Statute of *25 H. 8. cap. 14.* more at large. [270.]

*Writ upon the Statute of Marlebridge for a Fine for Non-fair pleading.*

**A** **T**HE Writ upon the Statute of *Marlebridge* for not fair Pleading lieth, where the Sheriff or other Bailiff in his Court will take a Fine of the Party, Plaintiff or Defendant, because he did not plead fairly, &c. And the Writ shall be directed to the Sheriff himself, or Bailiff, or him who will demand such Fine; and it is a Prohibition to him, commanding him that he do not demand such Fine; and it may be sued by the whole Hundred, or by all the County together, where he will require such Manner of Fine of them; and the Writ is such:

**B** *Rex Vic', &c. Cum de communi concilio, &c. provis. sit quod nec in itineribus Justic', nec in Com', Hundred', vel in Curia Baronis de cætero ab aliquibus capiantur Fines pro pulchre placitand', neque sic per quod non occasionent': Tibi præcipim', quod ab W. hujusmodi Finem de cætero non exigas, vel exigi facias, contra form' provisionis præd'; & districtionem, si quam, &c.*

And for the Hundred the Writ shall be such: *Tibi præcipimus, quod a communitate Hundredi de I. hujusmodi Finem de cætero non exigas, vel exigi facias, contra form', &c.*

**C** And by the Rule in the Register it may be against every other Man who will distrain for such Fine, and he may have an *Alias* and a *Pluries*, and an Attachment upon the same: And if after the first Writ of Prohibition delivered he distrain for such Fine, then the Party who is distrained may sue forth an Attachment against the Sheriff or Bailiff, or him who distraineth him; and the Form of the Attachment is such:

*Rex Coronatoribus suis in Com' Linc' salutem. Si A. fecerit, &c. tunc ponite, &c. B. Vic' nostrum, vel Vic' nostrum Com' prædict', quod sit cor' Justic' nostris, &c. ostens. quare cum de communi concilio, &c. (usque ibi, ab aliquibus non capiantur Fines pro pulchre placitand', neque sic per quod non occasionent'), idem Vic', vel idem B. distrinxit præf. A. pro hujusmodi Fine præstand' in Com' præd', contra form' provision' præd' ac contra prohibit' nostram. Et habeas ibi, &c. & Averia ipsius A. ea occasione capta interim deliverari fac'. Teste, &c.*

But note, That he may sue forth that Writ of Attachment against the Sheriff, or other, although that he never sueth forth any Writ of Prohibition before directed to the Sheriff or Baliff; but then he ought for to be distrained for that Fine; for the Statute in it self is a Prohibition to the Sheriff, and to all others, that they do not distrain for such

Attachment upon a Prohibition.  
Br. 13.  
Vid. 9 H. 6.  
61 & 19 H. 6.  
Fine 54. *Ascue.*

Fine for fair Pleading; but if the Sheriff, or other, demand such Fine, and doth not distrain for the same, then he cannot have a Writ of Attachment for such Demand made because he is not damnified by the Demand, &c.

*Grants made by the King expressed and contained in the Register, to be remembred.*

**R**EX Ballivis & probis hominibus Villæ de P. salutem. Sciatis quod de gratia nostra speciali concessimus vobis in auxil' Villæ præd' paviand', quod a die consecutionis præsentium, usque ad finem quinque annorum proxim' sequent' plenarie complendorum, capiatis in eadem Villa Consuetudines subscriptas; viz. de quolibet Summag', &c. Et ideo vobis mandamus, quod Cons. prædict' usque ad finem termini prædict' capiat', ut prædict' est; completo autem termino dictor' quinque annor', dictæ Cons. penitus cessent & deleant'. In cujus, &c.

*Grant of a Stewardship.*

**R**EX, &c. Sciatis quod concessimus dilecto & fideli nostro W. de H. officium & regimen Seneschalcie, &c. cum omnibus ad dictum officium pertin', quamdiu nobis placuerit: Et ideo vobis mandamus, quod eid' W. in omnibus tanquam Seneschall' pareat', respondeatis, & fideliter intendatis. In cujus, &c.

*Grants of Letters Patent.*

**S**EE in the Register notable Forms of Grants of Letters Patent made by the King in divers Manners, especially among the Writs of *Ad quod damnum*, and also after the Writs *de Corrodio habendo*. And there is a Patent made, *De custodia Forestæ Regis, in recompensationem certæ summæ, alicui per Regem ad vitam suam concessam*.

And other Patents there made upon Indentures between the King and others, upon a borrowing of Money by the King, by which Patents the King doth grant to hold and keep Covenant, &c.

The Grant of the King of the first Benefice which shall happen void is such:

[271.] Rex Cancellario suo qui nunc est, vel qui pro tempore fuerit, vel Custodi magni Sigilli, salut'. Promotionem dilecti Clerici nostri A. prætextu boni servic' sui tam Dom' Edwardo quondam Regi Angl', avo nostro, quam nobis impensi, cordit' affectantes, ac volentes ipsum a præmissa consideratione favore prosequi gratioso, volumus quod idem A. ad primum Beneficium Ecclesiasticum, taxationem viginti marcarum excedens, vacaturum, quod ad Præsentat' nostram pertinuerit, & quod duxerit acceptand', præsentetur. Et ideo vobis mandamus, quod eidem A. Literas nostras de Præsentat' ad primum Beneficium



*cium Ecclesiasticum vacaturum, quod ad nos sic pertinuerit; & quod duxerit acceptand', sub præd' magno Sigillo nostro in forma præd' habere faciat'. In cujus, &c. Teste, &c.*

But such Grants are not in Use at this Day.

- A** A Grant of the King to one of his Chaplains of a yearly Pension out of the Exchequer, until he be promoted unto a Benefice, is thus :

*Rex omnibus ad quos, &c. salut'. Attendent' grata & laudabilia obsequia quæ dilectus Clericus noster A. nobis ante hæc tempora gratant' exhibuit, super quibus tam per dilectum & fidelem nostrum W. quam alios fideles nostros, sumus certitudinaliter informati, sperantesque quod in nostris agend' suæ affect' & benevolentiae puritate continuabit successivis actibus in futur', ac volentes ipsum munere prosequi gratiofo; concessimus ei quandam annuam Pensionem xx marcarum percipiend' singulis annis ad Scaccar' nostrum ad Festa Paschæ & S. Mich' per equales portion' quousque ei per nos fuerit provisum infra regnum Angl' de Beneficio Ecclesiastico quod duxerit acceptand'. In cujus, &c. Teste, &c.*

- B** There is another Grant in the Register, fol. 295. made by the King to one, to give him Authority to reconcile the King's Enemies who have left their Obedience, and adhered unto other the King's Enemies, &c. and to grant Pardon to them; and the Grant is such :

*Rex universis & singulis, &c. ad quos, &c. sal'. Sciatis quod nos de fidelitate probata & circumspeditione provida dilecti & fidelis nostri Antonii Lucy plenarie confidentes, dedimus eidem Antonio plen' tenor' præsent' potestat' nomine nostro recipiend' ad fidem & pacem nostram homines de partibus de Galloway in Scotia, ad fidem & pacem nostram non existent', & alios qui eisdem Scotis contra nos adherent, seu adhæserunt, & cum eis contra nos de inimicitia nostra fuer', & qui ad fidem & pacem nostram venire voluer', & quos ad fidem & pacem hujusmodi for' viderit admittend'; & Literas de Pardonatione dictarum adhæfionis & inimicitiae, necnon de hujusmodi admissione ad pacem nostram, eisdem hominibus pro securitate sua in hac parte nomine nostro faciend', ratum & gratum habitur' quicquid idem Anton' fecerit nomi' nostro in præmiss'. In cujus, &c. Teste, &c.*

- C** There is another Grant made unto one of the Custody of a Castle, and the Ammunition therein, for what Time it shall please the King, and a Writ thereupon directed to him who had the Custody thereof before, to deliver to him the Castle, and the Implements and Things appertaining to the same.

And you may see there the Patents made to Sheriffs to be Sheriffs to the Counties, and also the Patents made to the Escheators of the Counties, and also the Writs to the old Sheriffs and Escheators to deliver unto them the Rolls and Writs, &c.

- D** And Letters Patent of Attendants unto Archbishops, Abbots, and all others, to be Attendants unto them in those Things which do appertain to their Office. The Form of Nomination to be made by the King to an Abbey or other Person. Of one to be Vicar, and that the Abbot do present him over to the Ordinary. And also the Form of Revocation made by the King of that Nomination. And also the Form of the Writ which the King sends to the Ordinary to admit of that Revocation,

tion, and to admit another Person by another Nomination. All these appear in the Register, *fol.* 302.

And divers other Presentations made by the King, and also Revocations of his Presentation; and also Nominations made by the King in his own Right, or in the Right of others, are there in the Register; and Grants made by the King of Donatives, and the Writs directed unto the Sheriff to put them in Possession; and Writs there to the Ordinary, to assign unto a Prebendary *Stall in choro, & locum in capitulo*, who hath the Prebend by the King's Collation; and divers Ratifications there made by the King to divers Incumbents of Churches, or Prebends, which they have in Possession as Incumbents, &c.

And many Forms of Writs made to Abbots or Bishops, to have yearly Pensions for his Chaplains, until they are promoted to Benefices: And the Writ to the Chancellor to present in the King's Name such a one, the King's Chaplain, to the first Avoidance of any Benefice which shall be void, which appertains to the King; and also Grants by the King to receive a yearly Pension out of the Exchequer.

And divers Forms of Writs of Proxy are in the Register, to sue, E defend or answer, &c. or to resign a Benefice, &c.

And the Form of the Resignation, &c. and the Form to make Protestation when a Man will resign his Benefice, &c. appear in the End of the Register, in *fol.* 302. and in other *Folio's* there following.

*And so endeth this present Treatise, called, New Natura Brevium, which Book fully declares the Natures of the Original Writs contained and expressed in the Register.*

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